LAW AND CONTEMPORARY PROBLEMS

FARM TENANCY

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FARM TENANCY

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FOREWORD

A "selected list of references" on "Farm Tenancy in the United States, 1918-1936," was recently published by the United States Department of Agriculture.[1] That list comprised 1070 items. In justification of the present addition to so stupendous a total, two considerations may be pointed to. First, by the enactment of the Bankhead-Jones Farm Tenant Act late last July, the Congress embarked the federal government on a long-term program directed to the alleviation of that congeries of problems which the term "farm tenancy" connotes. Second, much of the literature of farm tenancy has represented the practice of social diagnostics, not therapeutics. Indeed, most of the remedies prescribed for the sufferers have been designed for self-administration. But the experience of the depression years has brought an awareness that there is a third party in interest to the agricultural landlord-tenant relationship: the state. The resulting interest in the possibilities for governmental action in this field constitutes merely the belated facing of a responsibility which has been assumed by government in almost every nation of the world. Yet the fact that our abundant land resources and at least intermittently prosperous agriculture have enabled us so long to defer action has rendered more difficult the question of what lines of governmental action are now appropriate and feasible. The articles comprising this symposium represent a consideration of some of the experiments which are being tried or have been projected, with special emphasis upon their legal and administrative aspects.

As the illuminating *Report of the President's Committee on Farm Tenancy* convincingly demonstrated, the plight of the farm tenant cannot be dissociated from the difficulties which confront those above and below him on the agricultural ladder. Nor, for that matter, can a consideration of the tenancy be isolated logically from the problem of agricultural prices and crop surpluses. Yet limitations of space have dictated the restriction of the symposium's scope to a consideration of issues specifically related to the tenant and sharecropper, with the exception of one article devoted to the status of agricultural labor. For the same reason it has been found impossible to treat such developments as the Southern Tenant Farmers' Union and the Delta Cooperative Farm, which, although of undeniable significance, represent attacks upon the problem along other than governmental lines.

D. F. C.

[1] Bureau of Agri. Econ., *Farm Tenancy in the United States, 1918-1936*, U. S. DEPT. AGRI., AGRI. ECON. BIBL. No. 70 (June, 1937).

FARM TENANCY DISTRIBUTION AND TRENDS IN THE UNITED STATES

HOWARD A. TURNER*

At the present time only half of the acreage that is in farms in the United States is farmed by its owners, the owners working personally with or without assistance of family and hired labor. The other half is farmed by managers or by tenants who have to lease part if not all of the land they use. This was the situation in 1935 and also in 1930 but a greater proportion of the acreage in farms was formerly owner-operated. In 1900 almost three-fifths, 59%, of the acreage in farms was farmed by its owners. These figures relative to acreage suggest that the tenure position of the American farmer is weak and is on the decline. This is a conclusion that may be confirmed by statistics of farms by number and kind, and also by what is known about the investment interests of farmers and others in farm real estate.

Farmers who owned all of the land they farmed were only 47.1% of all farmers in 1935, whereas they were 52.2% of all farmers in 1920 and 55.8% of all farmers in 1900. Farmers who rented all of the land they farmed were 42.1% of all farmers in 1935, whereas they were 38.1% of all farmers in 1920, 35.3% in 1900, 25.6% in 1880.[1] In 1935 over half, 52.2%, of the farmers rented some part if not all of the acreage they farmed. Some other farmers managed farms they did not own.

The younger a farmer is the more certainly must he farm as a tenant. In 1930 about seven-eights, 86.5%, of the farmers who were under 25 years of age were tenants or croppers. However, of farmers 45 to 54 years of age only about a third, 34.6% were tenants or croppers, and of farmers who were aged 65 years or over only about a sixth, 16.4%, were tenants or croppers.

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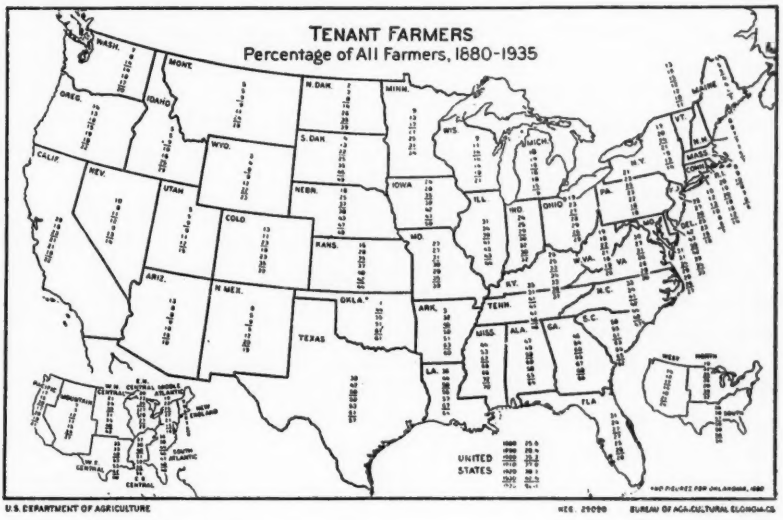
[1] Part of the increase in the rate of farm tenancy as indicated by these percentages occurred in connection with a fuller inclusion, in more recent years, of those counted as tenants and as farmers at all. The idea of regarding places worked by croppers as farms is still at variance with the way these places are commonly regarded in localities where much use is made of the cropper system of employing labor. However, thanks to the instructions and questions provided for census enumerators, beginning in 1920, cropper places have probably been pretty completely counted in as tenant farms. Inasmuch as the practice of giving employment to croppers has been confined almost wholly to the South, and largely to the cotton and tobacco growing parts of the South, only for such parts the South, the South as a whole, and the United States as a whole, is it necessary to accept with reservations comparisons showing the trend in farm tenancy.

Only about a fourth of the farms of the country are operated by farmers who have neither rent or mortgage interest to pay. To achieve this position of relative independence even this comparatively small group of farmers find it necessary to confine themselves to farms below average in desirability judged by value. In 1930 these farmers operated farms averaging only $6,129 in value as compared with an average of $7,796 for farms for the use of which operators had to pay interest, rent, or both interest and rent.

As compared with casual agricultural workers tenant farmers occupy a relatively sheltered position. To be a farm tenant is to have employment by the year and a house in which to live for the period of a year at least, a condition particularly advantageous to a family man. In times of economic stress the tenant farmers may even have less cause to worry than that class of owner-operators who are in debt with respect to their farms. In the five years between 1930-1935 land values shrank very considerably, farms decreasing in value from an average of $48.52 to an average of $31.16 per acre, a shrinkage of over a third, as much or more than the equity many owner farmers may have had in their farms in 1930.

Currently the financial interest of farmers in the real estate values of the farms they operate may be as much as two-fifths but can hardly be much more. The other three-fifths financial interest is held by other owners of real estate or by holders of farm mortgages. In 1910 the financial interest of such other owners and mortgage holders was about half of the values represented by farm real estate and in 1890 such other parties had about a two-fifths financial interest.



Farm Tenancy in the South Compared With the Situation Elsewhere

The South holds a place of major importance in the farm tenancy picture. So important is that position and so at variance with conditions elsewhere that consideration of farm tenure in the United States might well be made on the basis of contrasting situations, comparing the South with the rest of the country.

Over half, 53.5% in 1935, of the farms in the 16 states of the South were operated by tenants who owned none of the land they farmed. Of the farms in the rest of the country only three-tenths, 30.5%, were operated by tenants who owned none of the land they farmed. This striking difference in the rate of farm tenancy is related to differences with respect to a number of factors, among which color of farmer and type of farm should certainly be considered.

Of the farmers of the South nearly a fourth, 24% in 1935, are colored but only one percent of those who farm outside of the South are colored. This difference is of importance in relation to the national farm tenancy picture inasmuch as three-fourths, 75.2% in 1935, of the colored farmers of the country are tenants, whereas only three-eighths, 37.3% in 1935, of the white farmers of the country are tenants. Of the white farmers of the 16 southern states 46.1% were tenants in 1935, of the white farmers of the rest of the country 30.4% were tenants.

Type of farming is also of material weight in determining that the rate of tenancy in the South should be greatly different from that in the rest of the country. All but one percent of the cotton farms of 1930 were in the South and nearly three-fourths, 73%, of the cotton farms were tenant-operated.[2] Furthermore, a large proportion, half in 1930, of the farms of the South are farms of the cotton type.

Because so many of the farms of the South are cotton farms and because most cotton farms are small places operated by tenants, a large proportion, slightly over half in 1930 and 1935, of the farms of the South are under 50 acres in size, and the rate of tenancy on southern farms of that size is relatively high. In 1930, 69% of the farms in the South containing less than 50 acres were tenant-operated as compared with 41% of the farms containing 50 acres or more.

Although the rate of tenancy is higher in the South on farms of less than 50 acres than on larger farms the situation is quite the reverse in the northern and western states. In 1930 only 17% of the farms of the North and West containing less than 50 acres were tenant-operated as compared with a 32% rate for farms containing 50 acres or more.

Of great significance as explaining why the rate of tenancy on farms in the United States increased from 35.3% in 1900 to 42.4% in 1930 is the change that occurred in the number of farms in the South of less than 50 acres, farms created to make places for the increasing numbers of farmers interested in growing cotton and obliged to do so, for the most part, as tenants. Actually the rate of farm tenancy on farms of less than 50 acres located in the South changed but little during these years; it was

[2] Of farms other than farms of the cotton type 32% were tenant-operated in the United States in 1930.

68.4% in 1900, and 69.4% in 1930. But in the South the number of farms of less than 50 acres increased from 1,149,536 in 1900 to 1,629,923 in 1930. This was a greater numerical increase than occurred with respect to all farms, taking the country as a whole.

With no change in the rate of tenancy between 1900 and 1930 either in the South or the rest of the country on farms either less than 50 acres in size or larger the mere change in the number of farms of these two sizes would have increased farm tenancy in the United States from the 35.3% rate of 1900 to a 37.8% rate in 1930. Under the influence of this and of all other factors the rate of farm tenancy rose to 42.4% for the United States in 1930.[3]

It is interesting to note that the decrease in the rate of farm tenancy for the United States as a whole from 42.4 in 1930 to 42.1% in 1935 occurred when the rate of tenancy for the South declined from 55.5 to 53.5% while the rate of tenancy on farms of the rest of the country increased from 28.5 in 1930 to 30.5% in 1935. In view of the fact that the South has practically half the farms of the country, 50.2% in 1935, these changes might have cancelled each other but for the fact that there was but a six percent increase in numbers of farms in the five years in the South as compared with an eleven percent increase in the rest of the country. This difference increased the relative weight of the North and West, the section with the lower rate of tenancy, and so tended to lower the rate of tenancy for the country as a whole.

From the few facts so far stated it is obvious that changes in the rate of farm tenancy have been by no means uniform throughout the country or even in the same direction, also that the rate of farm tenancy is dependent to a very considerable degree upon such factors as the type and size of farms, differences in farmers and sectional difference. The blanket such differences must necessarily throw over the significance of averages for the country as a whole, or even over state and regional averages, makes it desirable to consider farm tenancy in as much detail as space and statistical information permit.

Type of Farm

As early as 1900 over two-thirds, 67.6%, of the farms on which cotton constituted the principal source of income were tenant-operated. This figure compares quite closely with the 72.7% tenancy on farms of the cotton type in 1930. The difference in the percentages is, indeed, only 5.1 as compared with a 7.1 increase in the percentage of tenancy on farms of the United States in general. However, only 18.7% of the farms of the country had cotton as a principal source of income in 1899 whereas in 1930 26.1% of the farms were of the cotton type. Thus the high tenancy rates prevalent on cotton farms came to affect a greater proportion of all

[3] Of the farms in the South of less than 50 acres 68.4% were tenant-operated in 1900, 69.4% in 1930. Of the farms of that size in the North and West 24% were tenant-operated in 1900, 16.9% in 1930. Of the farms in the South of 50 acres or more 30.2% were tenant-operated in 1900, 41.4% in 1930. Of the farms of the North and West of 50 acres or more 26% were tenant-operated in 1900, 32.1% in 1930.

farms, tending thereby to raise the rate of tenancy on farms in general even faster than was the case on cotton farms in particular.[4]

Of farms from which sales of hay and grain afforded the principal source of income in 1899, 39.3% were tenant-operated. At that time 23% of the farms were hay and grain farms. Farms of the cash grain type are not quite a comparable group, but it is interesting to note that in 1930 on the 7.2% of the farms of the country that were of the cash grain type over half, 51.2%, were tenant-operated. The lessee interest in land devoted to cash grain types of farming is undoubtedly considerably more than half because the renting of acreage by owner farmers as a means of increasing their operations is particularly common in cash grain areas.

The 1900 census reported 6.2% of the farms to have dairy produce, 1.4% to have fruit, and 2.7% to have vegetables as the principal source of income. The rates of tenancy for 1900 were 23.3% for the dairy produce farms, 16.4% for the fruit and 30.4% for the vegetable farms. In 1930 9.6% of the farms of the country were of the dairy type, 2.2% were fruit farms, 1.3% were truck farms. Of the dairy farms 21.4% were tenant-operated, of the fruit farms 11.4%, decreases from the rates of tenancy prevalent on these types of farms in 1900. The rate of tenancy in 1930 on truck farms was 32.8%, or slightly more than the rate on vegetable farms in 1900.

In 1900 the rate of tenancy on tobacco farms was 47.8%. On crop specialty farms the 1930 rate of tenancy was 46.7%. These two percentages are not strictly comparable inasmuch as not all crop specialty farms have tobacco as their specialty, some are sugar farms, beet or cane, others raise potatoes, or peanuts, or beans, etc. Altogether 6.9% of all farms were classified as crop specialty farms in 1930, with tobacco farms the largest single group. Between 1900 and 1930 the number of tobacco farms increased very considerably with the expansion of tobacco into new areas. In 1900, 1.9% of the farms had tobacco as a principal source of income.

Livestock apart from dairy produce afforded most of the income in 1899 on a considerable proportion, 27.3%, of all farms and of these livestock farms 20.3% were tenant-operated. In 1930 animal-specialty, stock ranches, poultry farms and general farms together constituted 28% of all farms, and the rate of tenancy for the combined group was 26.7%. Assuming these 1930 groups as combined to be comparable with the livestock farms of 1899, and they constituted quite the same proportion of all farms, the rate of tenancy has apparently increased very considerably on them. The 1930 rate of tenancy was 26.9% on general farms, 32.7% on animal-specialty farms, 15.4% on stock ranches and 12.7% on poultry farms.

Farms of the self-sufficing type were 7.9% of all farms in 1930 and of these farms over a fourth, 26.6%, were tenant-operated. In 1900 these farms were not considered as a separate type but were included in a miscellaneous group constituting

[4] In 1900 the rate of tenancy on farms on which cotton did not constitute the principal source of income was 27.9%. In 1930 tenants operated 31.7% of the farms that were not of the cotton type. Consequently the increase in the percent of tenancy on farms not of the cotton type was less than it was on farms of the cotton type.

18.5% of all farms. Of these so-called miscellaneous farms 24.9% were tenant-operated.

Value of Farm in Relation to Status of Operator

The value of farms is usually related to the income to be derived from them. Thus differences in the value of farms are suggestive of somewhat corresponding differences in the incomes and standards of living of farmers. If the inference is a valid one, tenants in certain Corn Belt states may have an income about ten times as great, on the average, as tenants in certain southern states, with all that may mean in terms of standards of living and opportunities to save money. For in 1935 the farms operated by tenants in Illinois, in Iowa and in Nebraska averaged over $10,000 in value whereas the tenant farms of Alabama and Mississippi had average values of less than $1,000.

Subject to the criticism that dwelling values as obtained by census enumerators can be no more than roughly approximate, statistics of the 1930 census on the value of dwellings occupied by farmers throw further light on the standards of living of farmers. At that time most farm dwellings of the South were given a value of less than $500, and in the South two-thirds of the farms with dwellings of less than $500 were occupied by tenants. Of the comparatively few southern farmers who enjoyed the occupancy of farms with dwellings worth $1000 or more in value less than a fourth were tenants. In the North-Central states, on the other hand, on but a small proportion of the farms were the dwellings valued at less than $500, a greater number of farms had dwellings worth $3,000 or more. The rate of tenancy ranged between 37% on North-Central state farms with dwellings worth less than $500 to 25% on farms with dwellings worth $3,000 or more.

In the Corn Belt, and seemingly in most of the country outside of the South, there is a rather close relationship between the value of a farm and the probabilities that it will be operated as a tenant farm. In the Corn Belt the percentage of farms operated by tenants rises with the average value of farms, counties compared. Farm values affect the rate of tenancy scarcely at all in counties of the Cotton Belt.[5]

The rate of tenancy in the counties of the North and West may be largely determined by the distribution of farms by value. In 1925 less than a fourth of the farms of Centre County, Pennsylvania, were valued at $10,000 so that the average rate of tenancy was determined more by the 27% rate on the large proportion of farms worth less than $10,000 than by the 59% rate on the small proportion of farms worth $10,000 or more. The rate of tenancy in Dickinson County, Iowa, on the other hand was very largely determined by the 63% rate on the great number of farms, nearly nine-tenths of all, that were valued at $10,000 or more and only to a minor degree by the 44% rate on the few farms worth less than $10,000. Of all farms in Centre County, Pennsylvania, 33.5% were tenant-operated in 1925 as compared with 60.9% of all farms in Dickinson County, Iowa.

[5] Turner, *A Graphic Summary of Farm Tenure* (U. S. Dep't of Agr. 1936) Misc. Pub. No. 261, p. 42.

Variations in Farm Tenure Within the South

For purposes of considering differences in farm tenure within the South it is of advantage to consider the Cotton Belt counties as apart from the rest of the 16 southern states. The Cotton Belt part of the 16 southern states contained over half, 53%, of the 3,421,923 farms of the South in 1935. The Cotton Belt part contained 46% of the white farmers of the South, 56% of the white farmers who farmed as tenants, 59% of the white tenants who farmed as croppers. It had 73% of the colored farmers of the South, 80% of the colored farmers who were tenants, 82% of the colored tenants who were croppers.

In the South the rate of tenancy among white farmers was 56% in the Cotton Belt as compared with 38% outside, while among colored farmers it was 84% in the Cotton Belt as compared with 59% outside. In the South 30% of the white tenants within the Cotton Belt were of cropper status as compared with 27% outside the Cotton Belt. As for the colored tenants of the South 61% were croppers in the Cotton Belt as compared with 50% outside of it.

Ignoring color of farmer it appears that within the Cotton Belt part of the South 65% of the farmers were tenants in 1935 and that croppers represented 43% of the tenants or 28% of the total number of farmers, whereas in the rest of the South 41% of the farmers were tenants, croppers were 32% of the tenants or 13% of the farmers.

No doubt many who regard themselves as well informed think that a majority of the tenant farmers of the Cotton Belt of the South are colored farmers. That, indeed, was the situation in 1920 and in prior years. However, in 1925, in 1930 and again in 1935 a majority of the tenant farmers of the Cotton Belt of the South have been whites. It is true that in parts of the Cotton Belt most of the tenant farmers are of the colored race; that was the case in 1935 in the following sub-regions of the Cotton Belt of the South: the southern Piedmont, the eastern Coastal Plain and Sand Hills, the Black-Belt of Mississippi and Alabama, the brown loam area of Mississippi and Tennessee, and the Mississippi and Red River Delta counties, of Tennessee, Mississippi, Arkansas and Louisiana. In the above sub-regions and in those listed as follows, colored tenants who were croppers out-numbered white croppers: the clay hills and rolling uplands of Mississippi and Alabama, the Piney Woods of Northeast Texas and the area comprising southwestern Arkansas and Northern Louisiana. In the remaining sub-regions of the Cotton Belt not only were white tenants more numerous than colored but white tenants who were croppers out-numbered the colored croppers. These sub-regions include the river and limestone valley counties along the Tennessee, the northern Piedmont, the Gulf Coast Plain, the cotton-self-sufficiency area of the Piney Woods, the Post Oak strip of the upper Coastal Prairie, the Black Waxy Prairie of Texas, Arkansas river valley and uplands, the cotton-general farming area of Oklahoma and Texas, and the large scale farming area of Oklahoma and Texas.

In most of the major sub-regions of the Cotton Belt of the South the percentage of tenancy among white farmers declined somewhat between 1930 and 1935 but in no case was this decline sufficient to bring the 1930 percentage down to the 1910 or 1920 figure. Even in 1935 over three-fifths of the white farmers were tenants in the group of counties between the Yazoo and Mississippi rivers, also in the other inland "delta" counties, in the Black Waxy prairie of Texas and in the large-scale farming area of Oklahoma and Texas. Only in the semi-self-sufficing Piney Woods, the clay hills and rolling uplands of Mississippi and Alabama, and in the southwestern Arkansas-northern-Louisiana sub-regions of the Cotton Belt were less than half of the white farmer tenants in 1935.

Between 1910 and 1930 the increase in percentage of tenancy among white farmers in the sub-regions of the South's Cotton Belt generally occurred in connection with an increase in the number of white farmers. This is the sort of thing that might be expected where opportunities to farm attract men who, for the most part, are without the means to own their farms. The decrease in the rate of tenancy among white farmers between 1930 and 1935 was accompanied by an increase in the number of white tenants and in the number of whites who were owners. Consequently this 1930-35 decrease in the rate of tenancy cannot be construed to have been the result of a decrease in the amount of employment available to whites as tenant farmers in the Cotton Belt.

In each of the major sub-regions of the Cotton Belt the percentage of white tenants farming as croppers was higher in 1930 than in 1920 but lower in 1935 than in 1930. In a few instances the 1935 percentage was carried down below the 1920 figure.

In the case of the colored farmers of the Cotton Belt these decreased in numbers between 1930 and 1935 in such a way as to cut the number of colored tenants furnishing their own mules relatively more than the number of colored croppers. As the number of colored owners was reduced somewhat at the same time the slight reduction in the rate of tenancy among these colored farmers in no wise represented a real gain. Of greater significance was the increase in proportion of colored tenants in the Cotton Belt working as croppers; it was 61% of these in 1935 as compared with 56 in 1930. Among white tenants, by contrast, the reduction in numbers of croppers was more than offset by an increase in number of white tenants furnishing their own mules. So far did these changes go that only 30% of the white tenants of the Cotton Belt farmed as croppers in 1935 whereas 38% had done so in 1930.

Among colored as among white farmers of the Cotton Belt of the South the rate of tenancy was at a comparatively high level in 1930 and at the time a comparatively high proportion of the colored tenants worked as croppers. Of the several major sub-regions of the cotton South the percentage of tenancy among colored farmers is highest in the region of Mississippi between the Yazoo and Mississippi rivers. Here also the greatest proportion of colored tenants work as croppers. In

this sub-region 97% of the colored farmers were tenants in 1930 and again in 1935. In it, of the colored tenant farmers 62% worked as croppers in 1920, 76% in 1925, 76% in 1930 and 85% in 1935. Nowhere else in the South do so large a proportion of the colored tenants farm as croppers.

The 1930 *Census of Agriculture* published statistics on the number of plantations with given numbers of croppers in a few of the most pronounced plantation counties of the cotton South.[6] In 1930 the 36,343 farm units in the three Delta counties of Bolivar, Quitman and Sunflower in Mississippi included 184 units operated by managers, 1,676 units operated by owners, full or part, 3,362 units operated by cash tenants, 5,775 units operated by share tenants and 25,346 units operated by croppers. Most of the croppers, about 85%, were colored. There were just about two thousand, 2,001, plantations with three or more croppers. Most croppers, perhaps about 95%, must have been on these places as there were 1,477 plantations with at least 5 croppers, 879 plantations with at least 10 croppers, 356 plantations with at least 20 croppers, 117 plantations with at least 50 croppers and 25 plantations with at least 100 croppers. Home farms were operated in connection with 861 of the 2,001 plantations with 3 or more croppers and as the number of croppers increased there was an increasing tendency to have a home farm in connection with the plantation. Owners, full or part, who operated a home farm and had three or more tenants as well numbered 638. In addition 344 owners, full or part, operated a home farm and had 1 or 2 tenants while 694 owners, full or part, operated places on which they had no tenants.

Age and Color of Farmer in Relation to Tenure

The widespread use in the South of the cropper system makes it comparatively easy for a man with little or no capital to be a tenant farmer there with the status of a cropper. In the South it is quite easy to become a cropper at the age of marriage and among those who have a prospect of becoming croppers marriage is seldom deferred for the purpose of accumulating capital. Elsewhere in the country opportunities open to men without considerable capital to become tenant farmers are comparatively rare. Thus there is no great point in combining statistics on age of farmer in relation to tenure status to consider the situation in the country as a whole. Differences between the white and colored farmers of the South with respect to the proportion occupying the status of croppers make it desirable to consider these races separately in comparisons of tenure status in relation to age.

A higher percentage of farmers in each age group were tenants in 1930 than in 1910 and this holds true for white farmers of the South, colored farmers of the South, and farmers of the rest of the country considered regardless of color. Perhaps no less significant is the fact that there has been a reduction in the proportion of young farmers to all farmers. For example in the 32 states of the North and West

[6] Elliott, *Types of Farming in the United States* (U. S. Dep't of Commerce, 1933) 180-181.

24% of the farmers reporting their age in 1910 were under 35 years of age but only 18% were that young in 1930.

That most colored farmers may not expect to become owner farmers is indicated by the fact that even of those 65 years and over 56% were tenants in 1930 in the South. Of the white farmers of the South that old, only 19% were tenants in 1930, and of the farmers 65 years or over in the rest of the country only 9% were tenants.

There were more farmers between the age of 35 and 45 than in any other ten year age group of older or younger farmers. Of these 35 to 45 year old farmers, 82% were tenants in 1930 among the colored of the South, 49% were tenants among the whites of the South and 37% were tenants among farmers in the rest of the country. Comparable percentages for 1910 were, respectively 77, 38 and 28.

In 1930 there were, in the South, 529,000 white and 186,000 colored farm operators who were aged 35 to 45 years; in the rest of the country were 738,000 farm operators that old. Assuming that as these grow older they are replaced by enough younger men to keep their numbers constant and that these younger men were working on farms in 1930, there must have been, making no allowance for death among younger men so employed, on farms of the South at least 97,000 whites and 18,000 colored aged 25 to 35 and 337,000 whites and 87,000 colored under the age of 25 who, in 1930, were not already farm operators. On farms in the rest of the country there must have been at least 289,000 between the ages of 25 and 35 and 657,000 between the ages of 15 to 25 who were not farm operators in 1930.

The 404,000 total of workers without tenure aged 25 to 34 in 1930 required to supplement the 1,049,000 farm operators aged 25 to 34 if the 1,453,000 operators aged 35 to 44 are to be kept constant in number as older ones leave the age group with increasing age, is a very minimum, inasmuch as the number makes no allowance for death. It may be taken as some measure of the minimum number of agricultural workers of the age competent enough to be farm tenants but hardly as any measure of the actual number of agricultural workers aged 25 to 34.

Tenant farmers have an average age of about ten years less than owner farmers and consequently more of their children are of a dependent age. In 1925 the population on owner-operated farms averaged 4.5 individuals including one child under the age of 10 years. By comparison the population on tenant-operated farms averaged 4.6 individuals including 1.4 individuals under the age of 10 years. The significance of this distribution of the population on farms was that 46.4% of the farm children under 10 years of age were on tenant farms although these farms had only 36.3% of the farm population 10 years of age and over. Put another way, 30.5% of the population on tenant farms was under the age of 10 years as compared with 22.3% of the population on owner-operated farms. The reader need not be reminded that differences such as these must make a material difference in the standards of living that can be maintained on tenant as compared with owner-operated farms.

THE BANKHEAD-JONES FARM TENANT ACT

JAMES G. MADDOX*

With the enactment of the Bankhead-Jones Farm Tenant Act,[1] signed by President Roosevelt on July 22nd of this year, another feature was added to the new national land policy that has been slowly evolving under the New Deal. This act gives outright and specific legislative authorization for the continuance of the federal programs of rural rehabilitation loans and submarginal land purchase and development, which have heretofore been carried out under executive orders and financed by funds from appropriations for relief and work relief projects.[2] It places these programs under the administration of the Secretary of Agriculture, and, at the same time, authorizes him to inaugurate a system of long-term mortgage loans to aid landless rural families in becoming farm owners. From some viewpoints the Act is more important as a declaration of policy on the part of Congress than as an instrument for immediate accomplishments. Nevertheless, it lays the first foundation stones, upon which may eventually be built a comprehensive land program.

The following discussion of the Act has three purposes: (1) to present a resume of the legislative history of the law; (2) to describe its principal provisions which directly pertain to the promotion of farm ownership; and (3) to point out some of the obvious weaknesses of those provisions, and make suggestions for their improvement. Those sections of the Act which provide for rural rehabilitation loans to distressed families and for the purchase and development of land unsuited for farming will be only briefly mentioned. They are, however, very significant parts of the law.

I

Within a year after the inauguration of the cotton acreage adjustment program in 1933 and other farm relief measures which obviously redounded to the benefit of landowners, rumblings began to be heard that something should be done for farm tenants. In mid-summer of 1934, tenants and sharecroppers in north-eastern Arkansas were meeting to organize the Southern Tenant Farmers' Union, which was incorporated under the laws of Arkansas on July 26, 1934. By the fall of that year,

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[1] 50 STAT. 522, 7 U. S. C. A. §§1000-1029.

[2] For a discussion of the legal bases of the rural rehabilitation program, see Oppenheimer, *The Development of the Rural Rehabilitation Loan Program, infra*, p. 473. ED.

there had developed requests and demands for action. In several areas of the country, but especially in the South, tenants were dissatisfied, were moving from farms to towns and going on relief, and were constantly complaining that they were not receiving an equitable share of the benefit payments being made by the Agricultural Adjustment Administration for reducing cotton acreage. In general, the situation was one in which the propertyless classes of the rural South were losing the security which the traditional system had afforded them. The old plantation paternalism was breaking down, and many landlords were failing to assume their customary responsibilities toward tenants. The United States Department of Agriculture was not only receiving complaints relative to effects of the acreage reduction program on the status of southern sharecroppers and tenants, but it was also receiving, from widespread sources, numerous plans for alleviating the farm tenancy situation. Many of these were, of course, either the "crack-pot" ideas of "perpetual cranks" or vague Utopian schemes for correcting all the ills of a sadly depressed agriculture. Some of them, however, contained sound and fruitful suggestions. Several persons proposed that the federal government resell the farms which had been foreclosed on by the Federal Land Banks to tenant farmers. One plan of this general nature which reached the Secretary of Agriculture about January 1, 1935, was suggested by Frank Tannenbaum, who was at that time a Guggenheim Fellow and was later appointed to the faculty of Columbia University. This plan evoked more than usual interest in the various divisions of the Department of Agriculture, to which it was referred for comments, criticisms, and suggestions, partly because its proponent was well known as a student of social problems, and partly because it envisaged the establishment of an agency which would not only provide tenants and laborers with credit for the purchase of farms, but would also give them guidance and supervision in conducting their farm and home management practices. It was concerned primarily with the situation in the South, but could be adapted to all sections of the country.

Before the plan suggested by Tannenbaum had been considered by all the divisions in the Department of Agriculture to which it had been referred, Senator John H. Bankhead of Alabama expressed an interest in introducing a bill in Congress aimed at aiding tenants in becoming farm owners. He asked the Department of Agriculture to suggest the provisions which should be incorporated in such a measure. After a series of conferences and discussions among economists, sociologists, lawyers, and administrative officials of the Department of Agriculture, a suggestion was made to Senator Bankhead that a bill authorizing an annual appropriation to the Department, with which to purchase farms to be resold to tenants on long-time sales contracts, would be a start towards alleviating some of the evils of our tenancy system.[3]

[3] Tannenbaum participated in most of the conferences in which the details of this plan were developed, and for several weeks thereafter spent considerable time in explaining it to public leaders. It was similar to the plan which he had suggested to Secretary Wallace.

Senator Bankhead, however, rejected the idea of starting a program which was dependent upon small annual appropriations, and chose instead to introduce a bill which provided for the formation of a government corporation, similar to the Home Owners' Loan Corporation, with powers to issue government guaranteed bonds to the extent of $1,000,000,000. Consequently, he introduced in the Senate on February 11, 1935, a bill (S. 1800) known as the "Farm Tenant Homes Act of 1935."[4] With the introduction of this bill, there began the formal Congressional consideration of legislation which finally culminated in the enactment of the Bankhead-Jones Farm Tenant Act in July, 1937. There were other farm tenancy bills introduced in the first session of the 74th Congress, at least two of which were at an earlier date than the one by Senator Bankhead. These measures, however, received very little consideration after their introduction.

The Bankhead Bill (S. 1800) proposed to create a Corporation within the Department of Agriculture, "which shall be an instrumentality of the United States, and shall be under the direction of the Secretary of Agriculture, . . . and operated by him under bylaws, rules, and regulations to be prescribed by him for the accomplishment of the purposes of this Act." The bill provided that the proposed Corporation should have wide powers in its program of aiding farm tenants. It could make loans to tenants with which to purchase farms, or it could buy land and "execute contracts to convey the property to the purchaser . . . upon full compliance with all the requirements of said contract." Authorization was granted for the Corporation to make a conveyance of the property prior to the time full payment had been made by the purchasing tenant, and to take an ordinary real estate mortgage or deed of trust as security. The period for repayment of the indebtedness incurred by the tenant-purchaser was to be not less than 30 nor more than 50 years, and the rate of interest was to be "as low as the Corporation can secure the money plus a reasonable charge for administration." The Corporation was also given power to make loans to sharecroppers and tenants with which, "to buy farm homes and farm supplies and equipment, including livestock." Obviously the program proposed by the bill was both rural rehabilitation and the promotion of farm ownership.

Hearings on this bill were held by a Subcommittee of the Committee on Agriculture and Forestry in the Senate on March 5, 1935. Only eight persons appeared before the Subcommittee, and all of them were in favor of the bill. They spent most of their time in picturing the seriousness of the farm tenancy problem in the United States, in praising the bill as providing a means for coping with the problem, and in explaining in a very general way how a program of the nature proposed by the bill could be put into operation. All of the statements were of a generalized nature, and none of them were critical of the proposal. Secretary Wallace, who was the first person to appear before the Subcommittee, closed his formal statement by saying:

"I am happy to support a measure which has as its aim the creation of a substantial group of farm owners out of our present tenant class. I know of no better means of

[4] 79 CONG. REC. 1782 (1935).

reconstructing our agriculture on a thoroughly sound and permanently desirable basis than to make as its foundation the family-sized, owner-operated farm. I believe that the provisions of this bill can be put into effective operation in such manner as to bring greater individual opportunity and security to thousands of tenants. At the same time they should be of substantial aid in our crop-adjusting programs and in our attempts to conserve soil fertility and prevent erosion. Moreover, these provisions will aid materially in bringing about the development of a rural civilization embodying a higher standard of living and a better developed and more stable community life than has been possible under a system characterized by land speculation, absentee landlords, and migratory tenants."[5]

The other persons who appeared at the hearings were practically as strong in their support of the bill as the Secretary.[6]

Several bills, aimed at promoting farm ownership among tenants, had been introduced in the House before hearings had been held in the Senate on the proposed Farm Tenant Homes Act of 1935. One of these was identical with the Bankhead Bill in the Senate. Most of them had been referred to the Committee on Agriculture, but it was not until Congressman Marvin Jones of Texas, Chairman of that Committee, took an interest in farm tenancy legislation that any of these measures received noticeable consideration. By virtue of his Chairmanship of the Committee on Agriculture, Congressman Jones was the "key" to tenancy legislation in the House. On February 25, he had introduced a bill (H. R. 6151), known as the "Agricultural Bank Note Act," which provided among other things that reduced interest rates should be granted by the Federal Land Banks and the Land Bank Commissioner on loans made to small farm owners personally engaged in the operation of their farms or to persons who wanted to purchase small farms for personal operation. The interest rate on loans to such farm owners or purchasers was not to exceed 2% per annum according to the provisions of this bill, and loans of this character were not to be granted to persons on farms, the normal value of which was more than $7,000. Two days after hearings had closed on the Bankhead Bill in the Senate and when it was obvious that farm tenancy legislation was receiving considerable public support, Congressman Jones excerpted the section from the "Agricultural Bank Note Act" which proposed to grant mortgage loans through the Farm Credit Administration to owners and purchasers of small farms at 2% interest and introduced this section as a separate bill (H.R. 6503).

Congressman Jones was obviously interested in legislation which would promote the ownership of farms among small owners. His procedure for attacking the problem, however, was through granting lower interest rates on the farm mortgage loans made by the agencies of the Farm Credit Administration to the owners of small farms who personally operated their holdings. The bill introduced by Senator

[5] Hearing before a Subcommittee of the Senate Committee on Agriculture and Forestry on S. 1800, 74th Cong., 1st Sess. (1935) 13.

[6] The statements before the Subcommittee should not be interpreted as a reliable index of public opinion respecting the bill. The hearings were scheduled to continue for several days, but were cut short after one day because several persons who had been asked to testify were not able to appear and others who were opposed to the measure wanted to make statements before the Subcommittee.

Bankhead, on the other hand, proposed to place the administration of the program under the direction of the Secretary of Agriculture. Moreover, it authorized the Secretary of Agriculture to purchase land and resell it to tenants, sharecroppers, and laborers after a trial leasing period, as well as to make loans for the direct purchase of farms. This conflict in point of view continued to be important throughout all subsequent consideration of farm tenancy legislation. Congressman Jones apparently visualized the problem of promoting farm ownership among tenants as one which could best be administered by the Farm Credit Administration, and most adequately carried out through a procedure of granting ordinary farm mortgage credit on liberal terms. Senator Bankhead visualized the program as one which should be administered by the Department of Agriculture and should embody the procedure of land purchase and resale to tenant farmers.

These two points of view were at least partly reconciled through a series of conferences in which Senator Bankhead and Congressman Jones agreed to introduce a new bill (S. 2367) known as "The Farmers' Home Act." This measure was introduced, both in the House[7] and in the Senate,[8] on March 26, 1935. Immediately, it became popularly known as the Bankhead-Jones Farm Tenancy Bill. The principal manner in which this bill differed from the one which had been introduced earlier by Senator Bankhead (S. 1800) was with respect to the agency which was to administer the Act. The bill proposed to create a Farmer's Home Corporation, the management of which was to be vested in a Board of Directors "of five members, consisting of the Secretary of Agriculture and the Governor of the Farm Credit Administration as members ex-officio, and three members to be appointed by the President, by and with the advice and consent of the Senate." Obviously, this bill proposed to create a new agency, responsible neither to the Department of Agriculture nor to the Farm Credit Administration, but which had on its board of directors the principal officer of each of these agencies.

The bill was taken up for consideration on the Senate floor on April 16, 1935. It was discussed and vigorously debated for six daily sessions of the Senate.[9] It was obvious from the very beginning of the discussion that the bill had considerable support. The late Senator Joseph T. Robinson, the majority leader, was in favor of its passage. This gave it an aura of Administration support, and probably gathered strength for its passage from the ranks of those senators who were willing or anxious to "go along" with the party leadership. Nevertheless, on April 24, which was the sixth day of the debate, the bill was recommitted to the Committee on Agriculture and Forestry with instructions to report it back to the Senate not later than May 12.[10] The Committee made a few minor changes in the bill, although most of these were simply to clarify amendments which had been passed while the bill was under consideration on the floor of the Senate. It was reported

[7] H. R. 7018, 79 CONG. REC. 4490 (1935). [8] 79 CONG. REC. 4418 (1935).
[9] 79 CONG. REC. 5748, 5750, 5923, 5937, 6003, 6018, 6109, 6116, 6132, 6184, 6195, 6204, 6271-6290 (1935). [10] *Id.* at 6290.

from the Committee the second time on May 9, and came up for reconsideration on the floor of the Senate on June 21, 1935. It was passed by a vote of 45 to 31[11] near the end of the third day of debate, and immediately referred to the Committee on Agriculture in the House.[12]

The bill passed the Senate in essentially the form it was in when introduced. Although it was amended several times none of the changes altered it in principle. The proposed Corporation still had power to issue $1,000,000,000 in government guaranteed bonds, although it was provided that: "None of said bonds shall be issued within one year after the approval of this Act," and that, "Within three years after the approval of this Act not more than $300,000,000 of said bonds may be issued." The capital stock of the corporation was also reduced from $100,000,000 to $50,000,000. The latter amount was to be the working fund of the Corporation during its first year of existence. In the discussions of the bill on the floor of the Senate there appeared to be general agreement among Senators that great care should be exercised to prevent the beneficiaries of the program from losing the farms which they were aided in purchasing. One amendment provided that: "No land purchased from the corporation . . . up to the value of $2,500 shall ever be encumbered with any lien or obligation, either statutory or contractual. Such land shall not be subject to any debt, or debts, or obligations of any kind of the owner, except taxes, and every conveyance, lease or contract executed by the Corporation . . . shall contain a provision that the land shall forever remain free of all liens or encumbrances of whatever kind, and such provision shall be a covenant running with the land as long as it shall be used as a farm homestead." Although the wisdom of such a provision might be questioned on several grounds, it is, nevertheless, evidence that the Senate recognized the necessity for protecting as well as promoting farm ownership. In view of our past land policies under the homestead laws and the traditional American attitudes toward land speculation this amendment was of some significance as an attempt to evolve a new national ideology toward property in land.

Although the Committee on Agriculture in the House held hearings on the bill for one day (April 16, 1935) the passage of the measure in the Senate virtually ended formal Congressional consideration of farm tenancy legislation in the 74th Congress. Only four persons testified before the House Committee on Agriculture, during the one-day of hearings, and three of these had previously appeared before the Subcommittee of the Committee on Agriculture and Forestry in the Senate. All were in favor of the objectives of the bill. From comments made during the hearings, it was evident, however, that several members of the Committee were opposed to it. Of more significance was the obvious lack of conviction on the part of any ranking member of the Committee that the tenancy problem was one needing immediate attention and that this bill offered a wise method of procedure. Evident also was a

[11] *Id.* at 9960.

[12] Votes were not cast, either for or against the passage of the bill, by twenty Senators.

general waning of interest in the fate of the measure on the part of Department of Agriculture officials. Secretary Wallace closed his statement before the Committee on Agriculture in the House, during the one day of hearings, by saying:

"I would trust . . . that the bill would not pass suddenly; I would urge that there be the greatest possible discussion in order that the bill might be made as nearly perfect as can be. I cannot help expressing the most profound interest in the objectives of the bill. I think they are absolutely sound. And because I am interested in the objectives I am also anxious that the procedure be safeguarded in every possible way so that it will not be possible for some future Congress, 10 or 15 years hence, to say that this law was enacted without sufficient thought as to the mechanics, for the supervision of the tenant while beginning his first agricultural practices and habits which are necessary when a man is operating his own land."

These remarks were quite different from those previously quoted with which the Secretary had closed his statement before the Subcommittee of the Senate Committee on Agriculture and Forestry. The version of the bill on which the House Committee was holding hearings did not place the proposed corporation in the Department of Agriculture. As has been explained, it provided for the creation of a new agency to administer the tenancy program. Moreover, it had been announced that the Resettlement Administration would be organized outside of the Department of Agriculture. Both factors were important in shaping the fate of the bill in the House. Instead of gaining strength, it became a measure which had few ardent and vociferous friends. After the Resettlement Administration was organized, it was the only government agency actively sponsoring the passage of the bill in the House. Brooks Hays, special Assistant to the Administrator of the Resettlement Administration, spent practically full time in developing support for the bill both among Congressmen and public leaders. On the whole, however, Congressmen were occupied with other matters. With a few exceptions they showed a lackadaisical attitude toward the tenancy bill. The rank and file were waiting for Committee action. But the bill had definitely hit a snag in the House Committee on Agriculture, and the first session of the 74th Congress adjourned without the bill having been reported. Throughout the second session of the same Congress the bill was hardly considered by the House Committee. Congressmen were more interested in the forthcoming elections than in tenancy legislation. When the second session of the 74th Congress adjourned, in the summer of 1936, without the bill having even been considered on the floor of the House, the prospects for legislation to aid tenants in becoming owners "reached a new low." The failure of the House to pass the bill during either the first or the second session of the 74th Congress meant that favorable action would again have to be taken by the Senate, before the measure could become a law.

The entire period from the passage of the bill by the Senate in June, 1935, until the 75th Congress convened in January, 1937, was one in which the consideration of tenancy legislation by Congress was practically at a standstill, but, at the same time, it was a period in which the public was probably more fully informed respecting

tenancy problems and conditions than ever before. Soon after the bill was introduced, in the spring of 1935, a wave of newspaper publicity swept the country which was concerned mainly with picturing the growth and extent of tenant farming, the activities of the Southern Tenant Farmers Union, and the principal provisions of the Bankhead-Jones Tenancy Bill. This flurry of press notices subsided somewhat after the bill passed the Senate, but an increased number of magazine articles, pamphlets and short books began to appear which discussed the tenancy situation in more constructive and critical terms. The interest which was aroused is partly indicated by the fact that both major political parties incorporated pledges in their 1936 platforms to sponsor legislation to alleviate the farm tenancy situation. Soon after President Roosevelt was re-elected he appointed a special Committee on Farm Tenancy to "thoroughly examine and report on the most promising ways of developing a land tenure system which will bring an increased measure of security, opportunity, and well-being to the great group of present and prospective farm tenants." This Committee immediately set to work to prepare a report for the use of the new Congress which convened January 1, 1937. Public hearings were held by subcommittees of the Committee in Indianapolis, Lincoln, San Francisco, Dallas, and Montgomery. These hearings were well advertised, attended by hundreds of people, and created much public discussion of tenancy problems. At the same time, they furnished many guideposts to the subcommittee and technical personnel engaged in drafting the report.[13]

When the first session of the 75th Congress convened, the stage was set for considering farm tenancy legislation. The elections were over. The Administration had been returned to power by an overwhelming vote. Campaign promises had been made, and the Congress faced the task of fulfilling them. On January 5, 1937, Congressman Jones introduced a bill in the House, called "The Farmers' Home Act" (H.R. 8),[14] and the next day Senator Bankhead introduced a bill by the same title (S. 106)[15] in the Senate. The bills had practically identical provisions except with respect to the management of the proposed Farmers' Home Corporation, which was to administer the program. The bill introduced by Congressman Jones provided that: "The management of the Corporation shall be vested in a board of directors consisting of three officers or employees of the United States, designated by the President of the United States, one of whom shall be from the Treasury Department, one from the Department of Agriculture, and one from the Farm Credit Administration." Senator Bankhead's bill provided that: "The management of the Corporation shall be vested in a board of directors . . . of three members, consisting of the Secretary of Agriculture, the Under Secretary of Agriculture, and the Assistant Secretary of Agriculture." The bills followed the same general prin-

[13] For a list of the Committee, Technical Committee and persons who contributed material to the report, see FARM TENANCY, REPORT OF THE PRESIDENT'S COMMITTEE (Feb. 1937) 28-30. (The Report was also printed as H. R. Doc. No. 149, 75th Cong., 1st Sess. (1937).)

[14] 81 Cong. Rec., Jan. 5, 1937, at 21. [15] *Id.* at 69.

ciples that had been incorporated in the measure which had passed the Senate in June, 1935. One important difference, however, was with respect to the manner in which the program was to be financed. As has been pointed out, the 1935 bill provided that the Corporation should have an original capital of $50,000,000 and, after the first year of operation, power to issue government guaranteed bonds to a maximum amount of $1,000,000,000. The bills introduced by Senator Bankhead and Congressman Jones in January 1937, authorized an appropriation of $50,000,000 for the original capital stock of the Corporation, and an additional appropriation of $50,000,000 "for each of the ten fiscal years succeeding the first. . . ." The change from a program financed by special bond issues to one dependent upon annual appropriations was in line with the suggestions which had been made to Senator Bankhead two years earlier, when he had first expressed an interest in a tenancy bill. The reduction in amount of funds represented, in part, a widespread belief that the public debt was mounting too rapidly and, in part, a recognition by government officials as well as by members of Congress that a program aimed at promoting farm ownership through the purchase and resale of land would be forced by the very nature of the work to proceed slowly.

Before the President's Committee had made its report on February 16, the Committee on Agriculture in the House had already started hearings on the bill introduced by Congressman Jones. About twenty persons submitted oral or written statements during the eleven days on which hearings were held, but little tangible progress was made until after the report of the President's Committee had been released. The Committee placed the problem of farm tenancy in a much broader framework than that in which it had usually been discussed before, definitely indicating that a program which was concerned solely with the direct promotion of farm ownership was only one small part of a more general program that was needed. Greater farm security was set forth as the major objective toward which land tenure legislation should be directed. Accordingly, the establishment of a Farm Security Administration in the Department of Agriculture was suggested. Its function would be to administer, under the direction of the Secretary of Agriculture, a broad program aimed primarily at increasing the opportunity and security of the great mass of under-privileged rural people. The findings and recommendations of the Committee indicated that its deliberations had not been concerned with tenants and tenancy alone, but had encompassed the problems and needs of all rural groups below the economic level of those who could be aided by the agencies of the Farm Credit Administration and above the level of chronic indigents and permanent relief cases. The Committee declared that: "Approximately one farm family out of four occupies a position in the Nation's social and economic structure that is precarious and should not be tolerated."[16] The Committee submitted "recommendations for both Federal and State action, as well as for joint action under Federal-State co-operation."[17]

[16] FARM TENANCY, REPORT OF THE PRESIDENT'S COMMITTEE, 4.

[17] A complete statement of the recommendations of the Committee will be found in the Report, *supra* note 13.

The principal recommendations for federal action included "measures to facilitate farm-home ownership and to help existing owners keep their farms, measures for the rehabilitation of groups not now prepared to take over their own farms, certain suggestions for improving the condition of laborers, a program for aiding families stranded on submarginal land and taking such land out of cultivation, and proposals for the discouragement of speculation in farm lands."[18] After the recommendations of the President's Committee had been explained to the House Committee on Agriculture and contrasted with the provisions of the bill (H.R. 8), on which the Committee had been holding hearings it was evident that a new measure was required if many of the recommendations were to be put into legislation.

When the Committee on Agriculture in the House started the task of drafting a measure on which the majority could agree and which at the same time would put into law the major recommendations of the President's Committee on Tenancy, difficulties immediately arose. Executive sessions of the Committee were, of course, not open to the public, nor are records available which indicate the nature of the discussions. Nevertheless, it is fairly clear from many scattered sources of information, including conversations with Committee members, that the real difficulty facing the group was to reach an agreement on how to proceed toward promoting farm ownership among tenant farmers. There appeared to be little disagreement over the nature of legislation authorizing rural rehabilitation and submarginal land purchase programs. Moreover, there was general agreement that something should be done to aid worthy tenants in becoming farm owners. The problem was: How shall this be done? The bill which had passed the Senate in June, 1935, proposed a procedure by which the government would purchase land, develop it into suitable farms, lease it to tenants on trial for a period of not more than five years, and, if the client proved to be satisfactory, enter into a contract of sale by the terms of which the purchaser would receive title only after all, or an agreed proportion, of the purchase price had been paid. This general type of procedure was also embodied in the bill (H.R. 8) on which the Committee had been holding hearings. Practically all persons who testified before the Committee favored this method of procedure. Moreover, the President's Committee had recommended this procedure, and had said: "Contracts of sale should not be undertaken until after a trial lease period not to exceed 5 years. . . . At the termination of the trial period the Corporation should enter into a contract of sale under which the purchaser may pay up all the principal and obtain a deed any time after 20 years. At the minimum rate of repayment a deed would be obtained at the end of 40 years."[19] Notwithstanding the advice of experts and the precedent set by the Senate in passing "The Farmers' Home Act" almost two years before, the Committee disapproved a program, in the latter part of

[18] *Id.* at 11.

[19] *Id.* at 12. This recommendation was not concurred in by all members of the Committee. See, for instance, the dissenting statement by Edward A. O'Neal, President, American Farm Bureau Federation, *id.* at 22.

March, involving the purchase of land and resale to tenants, by a vote of 13 to 11. A subsequent motion to reconsider was lost by a tie vote of 12 to 12.

As a result of this action, another approach to the promotion of ownership had to be worked out. The Committee was willing to continue the program of rural rehabilitation loans for families who could not be aided to ownership, and the submarginal land purchase program. But it didn't want the government in "the land business." In other words, it didn't want the government to buy land and resell it to tenant farmers. A plan involving a system of long-term farm mortgage loans was the compromised result. On April 8, Congressman Jones introduced the "Farm Security Act of 1937" (H.R. 6240). It was supposed to embody the principal recommendations of the President's Committee on Farm Tenancy for federal action. Except for the loan program to promote farm ownership it was by far the most comprehensive measure to come out of the movement for tenancy legislation. The bill was divided into four titles, which provided for three separate programs of action. For the loan program to aid tenants in becoming owners, it authorized the appropriation of $50,000,000 for each fiscal year ending prior to July 1, 1942. For short-term rural rehabilitation loans an appropriation of $75,000,000 was authorized for this fiscal year and the next, and for the purchase of submarginal land an appropriation of $10,000,000 for this fiscal year and $20,000,000 for each of the three following fiscal years was authorized. This bill, however, immediately ran into difficulty from a new source. It was agreeable to the Committee on Agriculture, but the provisions for making loans to tenants with which to purchase farms commanded such little respect from House leaders and Department of Agriculture officials that the Rules Committee of the House refused to grant a rule by which the bill could be brought to the floor for debate and discussion. This difficulty was surmounted, however, by the introduction of a new bill (H.R. 7562) which was identical with the other except that the funds authorized for appropriation were drastically reduced.[20] For the loan program to aid tenants, provided for in Title I of the bill, appropriations of $10,000,000 for the present fiscal year, $25,000,000 for the next, and $50,000,000 for the fiscal year ending June 30, 1940, were authorized by the new bill. No appropriations were authorized for the rehabilitation loan program provided for in Title II. The President, however, was given power to allot "such sums as he determines to be necessary to carry out the provisions of this title," from appropriations for relief or work relief. Funds for the submarginal land purchase program were reduced to $10,000,000 for this fiscal year and $20,000,000 for each of the two fiscal years thereafter.

It was in this form that the "Farm Security Act of 1937" was reported to the House by the Committee on Agriculture. It was brought up for discussion, under

[20] A general economy wave which swept over Congress shortly before it adjourned was partly responsible for the refusal of the Rules Committee to allow H.R. 6240 to come up for debate. Strength probably could have been mustered to overcome this feeling, however, had the measure been one which Administration leaders, both in and out of Congress, could have strongly supported.

a special rule, on June 28, and passed the House by a vote of 308 to 26 the following day.[21]

The two-day discussion of the bill in the House[22] was, in large measure, a perfunctory routine affair. Under the existing rule no amendments were offered during the first day. The time was spent largely by the members of the Committee on Agriculture in describing the extent of tenancy and the general nature of the provisions of the bill under discussion. Very little attention was given to Titles II and III, providing for rural rehabilitation loans and submarginal land purchase. The tenancy situation and the provisions of Title I aimed at promoting farm ownership were the focal points of interest. The Chairman of the Committee on Agriculture, and his lieutenants, were in charge of the discussions. They pointed out that there had been much trouble in obtaining agreement on the bill in Committee. They argued, however, that tenancy was a tremendous national problem, about which something should be done, and that the enactment of this bill would provide an experimental beginning. It was frankly admitted that the small amount of funds authorized would be of negligible influence in decreasing the amount of tenancy, but the establishment of a new policy and the need for a cautious beginning were declared to be very important. There was practically no open opposition to the bill, although there were many cynical remarks about attempting to solve the tenancy problem with such a small appropriation.

As soon as the bill had passed the House it was referred to the Senate, where no action had been taken toward farm tenancy legislation since Senator Bankhead had introduced "The Farmers' Home Act" (S. 106) early in January.[23] However, the Subcommittee of the Committee on Agriculture and Forestry in the Senate, which had charge of the tenancy bill, was favorable to its passage, and was merely waiting to find what disposition the House would finally make of tenancy legislation. On July 1, Senator Bankhead's bill was brought to the Senate floor for discussion and debate. It had been rewritten in Committee, but the essential principles of the bill were the same as those in the measure which the Senate had passed about two years before. It was concerned wholly with aiding tenants in becoming owners. Hence, it was more limited in scope than the bill which had passed the House. It retained the proposal to set up a Corporation within the Department of Agriculture which would purchase farms and resell them to tenants on contract after a trial leasing period. In this respect it involved a different principle of procedure from that which had been incorporated in the bill that had passed the House. The funds provided for the proposed Corporation were reduced in the bill reported by the Committee to $10,000,000 of capital stock, so that it would conform in this respect to the bill which had passed the House.

[21] 81 Cong. Rec., June 29, 1937, at 8501.

[22] *Id.*, June 28, 1937, at 8344-8352, 8359-8380, 8382-8394; June 29, 1937, at 8460-8502.

[23] As has been indicated, this bill was almost identical with the bill (H.R. 8) on which the Committee on Agriculture in the House had held hearings, and for which it had substituted "The Farm Security Act of 1937" (H.R. 6240 and H.R. 7562).

Senator Bankhead's strategy on the floor was to have his bill (S. 106) passed by the Senate, then have the Senate proceed immediately to consideration of the bill passed by the House (H.R. 7562), amend the latter bill by substituting the Senate bill for it, and have the new measure sent to conference. This procedure was followed with the consequence that the attention of the Senate during its two-day discussion of tenancy legislation was directed wholly to a consideration of "The Farmers' Home Act" in the form in which it had been reported from the Committee.[24] The discussion of the bill in the Senate[25] was not only perfunctory but desultory. As a matter of fact, there had been a general agreement among Senators that the bill would not be opposed. It was passed on July 2 without a record vote, and with only a few minor amendments having been made.[26] The measure was immediately sent to conference, where many of its supporters hoped that it might be substituted for Title I of the House bill. It was evident that an act following the principles recommended by the President's Committee on tenancy might yet be obtained, if the Conference Committee could work out a compromise by which the House would accept the Senate measure in lieu of Title I of the bill which it had passed, and the Senate would in turn accept the Titles of the House bill which provided for rural rehabilitation loans and submarginal land retirement. However, this compromise did not eventuate. The Conference Committee[27] agreed upon a measure which was only slightly different from "The Farm Security Act of 1937" (H.R. 7562) which had been passed by the House. The Act was perfunctorily passed in final form by both the House and the Senate shortly after it had been reported from the Conference Committee.

II

The law as finally enacted[28] has three principal purposes: (1) to promote farm home ownership through a system of long-term farm mortgage loans; (2) to rehabilitate distressed farm families (who cannot be aided in purchasing a farm) through short-term loans for livestock, equipment and supplies; and (3) to provide for the development of a land conservation and utilization program, through the purchase of land submarginal for agriculture, and the development of such land into uses for which it is best suited. The Act is divided into four titles, the first three of which pertain to the procedures to be followed in attaining the three respective objectives. The last title sets up the administrative machinery for carrying out the procedures specified in the other portions of the Act. The law is to be administered

[24] Except for a different financing procedure, it was in substantially the same form as the bill which had passed the Senate in June, 1935.

[25] 81 Cong. Rec., July 1, 1937, at 8615-8628, 8630-8635, 8638-8643; *id.*, July 2, 1937, at 8737-8749.

[26] One amendment, offered by Senator Barkley of Kentucky, changed the name of the measure to "The Bankhead-Jones Farm Tenant Act." Senator McNary of Oregon declared that, "it is the first time in the history of legislation that an act has been designated officially in the Act itself by the name of the author." *Id.* at 8746.

[27] The Conference Committee was composed of: Senators Bankhead (D) of Alabama, Pope (D) of Idaho, Frazier (R) of North Dakota and Congressmen Jones (D) of Texas, Doxey (D) of Mississippi and Hope (R) of Kansas.

[28] Bankhead-Jones Farm Tenant Act, *supra* note 1.

by the Secretary of Agriculture,[29] and a corporation known as the "Farmers' Home Corporation" is created within the Department of Agriculture as an adjunct administrative agency, to which the Secretary may delegate such powers and duties as are conferred upon him by Titles I and II of the Act.[30] The use of the Corporation for the promulgation of the submarginal land purchase and development program is not provided for. The Secretary is also authorized to continue to perform the functions vested in him by executive orders which transferred the Resettlement Administration to the Department of Agriculture, but, "only for the completion and administration of those resettlement projects, rural rehabilitation projects for resettlement purposes, and land development and land utilization projects, for which funds have been allotted by the President."[31] In other words, the Secretary may finish the projects started by the Resettlement Administration, and administer them, but he is not authorized by the Act to start new projects of this nature, except that a continuation of the submarginal land purchase program is specifically provided for by Title III. He may sell any of the land purchased by the Resettlement Administration, or otherwise owned by the government and under his supervision, for the purpose of aiding in the promotion of farm home ownership, and may make loans to the individual purchasers for the necessary improvements on such land.[32]

Since the programs of rural rehabilitation loans and submarginal land purchase were originated approximately three years before the Bankhead-Jones Farm Tenant Act was passed, the only important new features of the Act are, first, it gives independent legislative authorization for these programs which had formerly been conducted under Emergency Relief Acts and, second, it provides for a tenancy program. It is toward the latter feature of the law that the balance of this discussion will be chiefly directed.

For the purpose of making farm mortgage loans to aid "farm tenants, farm laborers, sharecroppers, and other individuals who obtain, or who recently obtained, the major portion of their income from farming operations," in acquiring farms of their own, the Act authorizes an appropriation of $10,000,000 for the present fiscal year, $25,000,000 for the fiscal year ending June 30, 1939, and $50,000,000 for each fiscal year thereafter.[33] The Secretary is authorized to make such loans in the territories of Alaska and Hawaii and in Puerto Rico, as well as in the United States.[34] The funds are to be distributed equitably, "among the several States and Territories on the basis of farm population and the prevalence of tenancy, as determined by the Secretary."[35] Preference must be given to married persons or those with dependents and to persons who can make an initial down payment, or who own the necessary livestock and equipment for successful farming.[36] "No loan shall be made for the acquisition of any farm unless it is of such size as the Secretary determines to be

[29] *Id.* §41.
[30] *Id.* §40(a) and (b).
[31] *Id.* §43.
[32] *Id.* §43.
[33] *Id.* §6.
[34] *Id.* §§1(a), 54.
[35] *Id.* §4.
[36] *Id.* §1(b).

sufficient to constitute an efficient farm-management unit and to enable a diligent farm family to carry on successful farming of a type which the Secretary deems can be successfully carried on in the locality in which the farm is situated."[37]

In each county in which loans are to be made the Secretary is directed to appoint, "a county committee composed of three farmers residing in the county." The members of these committees are to receive $3 per day and travelling and subsistence expenses, "while engaged in the performance of duties under this Act but such compensation shall not be allowed with respect to more than five days in a month." The committees are to meet on the call of the County Agent, or any other person whom the Secretary may designate, in their respective counties, for the purpose of examining loan applications and appraising farms with respect to which applications for loans have been made.[38] Anyone who desires to receive a loan under the provisions of this Act must file an application with the County Agent, or such other person as the Secretary may designate.[39] If the county committee finds that the applicant is eligible, and that his character, ability and experience are such that he will likely be a sound risk and a successful farmer, it then must examine and appraise the farm which the applicant desires to purchase. If it finds that the farm is satisfactory, it certifies these findings together with what it deems to be the reasonable value of the farm to the Secretary. When this certification respecting the applicant and the farm has been made by the committee, and not until this has been done, the Secretary may make a loan to the applicant in an amount sufficient to purchase the farm but not in excess of the value certified by the committee.[40] The funds which are loaned the applicant may be used by him for making repairs and improvements as well as for aiding in purchasing the farm. The security for the loan shall be a first mortgage or deed of trust on the farm, and repayments shall be made, "in instalments in accordance with amortization schedules prescribed by the Secretary."[41] However, the repayment period shall not extend for more than 40 years. The rate of interest is to be 3 per cent per annum.

The Act provides that the Secretary may prescribe the necessary covenants in the loan and security instruments "to assure that the farm will be maintained in repair, and waste and exhaustion of the farm prevented, and that such proper farming practices as the Secretary shall prescribe will be carried out."[42] The borrower is required to pay taxes and assessments on the farm, and to carry insurance on the buildings. Should the borrower sell, assign, or otherwise transfer the farm, or any interest therein, without first obtaining the consent of the Secretary, the latter, "may declare the amount unpaid immediately due and payable."[43] The same penalty can be invoked, according to the terms of the Act, upon the borrower's failure to comply with any of the covenants and conditions contained in the loan and security instru-

[37] *Id.* §43(a) and (b).
[38] *Id.* §1(c).
[39] *Id.* §2(a)(1).
[40] *Id.* §2(a)(2), (b), (d).
[41] *Id.* §3(a).
[42] *Id.* §3(b)(4).
[43] *Id.* §3(b)(6).

ments. There is also a provision in the law, made by the Conference Committee, which says that, "without the consent of the Secretary, no final payment shall be accepted, or release of the Secretary's interest be made, less than five years after the making of the loan."[44] This provision was apparently inserted in an attempt to prevent speculation. As will be pointed out later its significance is very questionable as a means of preventing a borrower from turning a quick profit by selling his farm within a short time after he had purchased it.

It is evident from the tenant provisions (Title I) of this Act that in major principles it authorizes nothing more than an ordinary farm mortgage program on very liberal terms. Where necessary the purchaser may be loaned an amount equivalent to the full value of the farm which he is purchasing for a 40-year period at 3% interest. Its benefits are limited to farm persons without land but the intention is clearly to make the loans available only to tenants who already have considerable accumulations. The highest type tenant, in other words, is the person whom the framers of this law intended it to aid. The provision for aiding them to ownership is in line with traditional American procedures, that is, by granting them farm mortgage loans.

The Act provides for departures from ordinary mortgage loan procedures mainly in the three following respects: (1) the terms of the loans are unusually liberal, in that each borrower could obtain credit equal in amount to the full value of the security for a longer period of time and at a lower rate of interest than is ordinarily possible; (2) the instruments under which loans are made and security given must contain provisions to assure that proper farming practices, as prescribed by the Secretary, will be followed by the borrower; and (3) the borrower must obtain the consent of the Secretary before he can assign, sell or otherwise transfer the farm to another person. If the borrower does not follow the proper farming practices, or if he sells or otherwise transfers the farm, the Secretary may declare the unpaid amount of the loan immediately due and payable. The requirement that the purchaser must follow the farming practices prescribed by the Secretary is aimed partly at protecting the security for the loan, but it is of primary importance in that it opens the way for the borrower to be aided, through supervisory guidance, in planning and conducting efficient farm management practices. Even among the highest types of farm tenants, technical guidance appears very desirable as an aid to them in becoming successful farm-owners. The provision requiring that the Secretary must give his consent before the mortgaged farm is sold or transferred is obviously aimed at preventing absentee owners and persons of substantial means from taking advantage of the liberal credit terms offered by the Act through purchasing farms from the original borrowers. A fourth feature of the law which permits a practice that is not wholly new, but which, at the same time, is not commonly followed by mortgage agencies, is that the Secretary is allowed to institute a system

[44] *Id.* §3(b)(6).

of variable payments for collecting both the long-term loans made under Title I and the short-term rehabilitation loans made under Title II of the Act. Section 48 of the Act says: "The Secretary may provide for the payment of any obligation or indebtedness to him under this Act under a system of variable payments under which a surplus above the required payment will be collected in periods of above-normal production or prices and employed to reduce payments below the required payment in periods of subnormal production or prices." Obviously this provision is not mandatory, but it does afford power for experimentation with one or more variable payment schemes. For this reason its potential significance is not to be under-estimated. Highly flexible farm prices and fixed mortgage payments have, in the past, wrought immeasurable hardships on thousands of farmers. Unless prices are stabilized or mortgage payments are made flexible the future may, in this respect, bring many repetitions of the past.

III

In the preceding sections of this article an attempt has been made to give a summary of the legislative history of the Act, and to explain the principal provisions pertaining to the promotion of farm ownership. The remaining task is to point out some of its weaknesses and make suggestions for its improvement.

One feature of the Act about which there should be universal agreement is that it will provide aid for only an insignificant proportion of the total number of farm tenants, sharecroppers, and laborers, in becoming owners. There is some truth in the view expressed by Congressman Lemke, of North Dakota, when, in discussing the bill on the floor of the House, he said: "I am surprised to hear so much fuss about nothing. If ever a mountain labored and produced a mouse, this bill is it. We have heard a lot of lip service that we are going to make farm tenants farm owners. In the light of that lip service, this bill is a joke and a camouflage."[45] The 1935 Farm Census indicated that there are approximately 2,865,000 farm tenants and sharecroppers in the United States. They operate farms with a total value of almost $11,000,000,000. In addition, there are uncounted thousands of farm laborers, and still other categories of farm families, "whose insecurity," declared the President's Farm Tenancy Committee, "is a threat to the integrity of rural life." Of course, few people would seriously contend that all, or even a large percentage, of these families, should immediately be granted a federal loan with which to purchase a farm. However, if the law is sound in principle most people would agree that many more should be aided than can possibly be done with the available funds. At the same time, the fact should not be overlooked that it is the grossest of inefficiency to appropriate a few million dollars to be loaned to individual farmers scattered in 48 states, Alaska, Hawaii, and Puerto Rico. (As a practical administrative procedure, the funds will have to be allocated in such a manner that almost every Congressman with farmer constituents will have a few borrowers within his district.)

[45] 81 Cong. Rec., June 28, 1937, at 8351.

If five per cent of the appropriation for this fiscal year is used for administrative purposes,[46] the net amount to be loaned will be $9,500,000. Assuming that the average size of the loans are $4,000, only 2,375 farmers could be aided to ownership.[47] This number is less than one-tenth of one per cent of the total number of tenants and sharecroppers in the country. If the appropriations reach $50,000,000 per year, and 5% of this amount is used for administrative purposes, 12,125 loans averaging $4,000 could be made each year. This number would be less than one-half of one per cent of the tenants and sharecroppers in the United States in 1935. Between 1920 and 1930 there was an increase in the number of tenants and sharecroppers of more than 20,000 per year, and this rate was practically doubled from 1930 to 1935. It is apparent, therefore, that more than $50,000,000 per year is necessary in order to prevent tenancy from increasing, unless there are other factors which will materially reduce the rate of growth characteristic of the past 15 years. The meager appropriations authorized for the first two years are mere "drops in the bucket." They are less than the appropriations made in many recent years for emergency feed and seed loans.

The inefficiencies of administering such small appropriations over such wide areas, and the almost negligible effects which the program will have in promoting ownership, are not, however, the only weaknesses of the law. Many students of farm tenancy problems, including most of those who were closely associated with the movement which led to the passage of this law, contend that the measure is greatly inferior to the original Bankhead-Jones tenancy bill passed by the Senate in 1935. If this is true, then the fact that the bill authorizes the appropriation of only a few million dollars may be a point much in its favor. In other words, if the principles of the legislation are questionable, the smaller the appropriations the better, until the law can be changed or proven by experience to be acceptable. The measure provides only for a program of liberal mortgage loans and does not permit the Department of Agriculture to buy farm land, lease it to prospective purchasers for a trial period, and then convey it on contract, to the successful clients, under the terms of an agreement by which title in fee simple would not pass to the purchaser until he had made the last payment or had, at least, accumulated a sizeable equity in the holding. A purchase and resale program of this general nature would have definite advantages over the loan program provided for by the Act in, at least, the following three respects: (1) it would be less conducive to land speculation; (2) it would permit aid, without the government assuming unreasonable financial risks, to the very low income classes who are most in need; and (3) it would be better adapted to

[46] The Act, §6, sets 5% as the maximum proportion of the appropriation that may be used for administration. If the borrowers are to be given considerable guidance, it is probable that administrative expenses will be the maximum.

[47] The figure of $4,000 is chosen merely for illustration. It is about 15% smaller than the average value of farms operated by full owners in 1935. If the borrowers make a down payment of approximately 15 per cent and purchase farms of about the same value as those operated by full owners the loans should average in the neighborhood of $4,000.

areas where the present holdings are large, such as the plantation areas of the South, and to situations where it is desirable to bring large bodies of new land into cultivation.

The general problem of land speculation is tremendously important to the welfare of agriculture, and a potent cause of farm tenancy. Yet there is reason to believe that this law will have a direct effect in encouraging speculative activities to a much greater extent than a law providing for a purchase and resale program. This appears to be true for two major reasons. First, many more buyers of land will be added to the market. Second, there are inadequate safeguards against alienation of the holdings purchased by the liberal loans. The expenditure of several million dollars per year for the purchase of farms would have a tendency to raise land values, whether the expenditures were made directly by a government agency or by individual farmers. Nevertheless, when the government is the only new buyer added to the market this tendency is likely to be much less than when many farmer-buyers are added. With respect to the land in any given community the government could exercise considerable independence. If landowners were demanding unreasonable prices, it could cease its buying activities in that community and proceed to purchase in another area. Under the loan program, on the other hand, such independence is hardly possible. In order to aid twenty tenants in a given county there will be twenty new bidders for farms in that county. Two or more of them may be bidding for the same farm. If the government can be persuaded, through the local county committee, into loaning practically all of the money for the purchase of these farms, both the buyers and the sellers may enjoy the sport of bidding up prices. Moreover, the loan program will tend to draw into the ranks of the borrowers every Tom, Dick and Harry who thinks that land values are going to rise and that he stands a chance of making a profit by gambling with the government's money. The law specifically provides that, at the end of five years, any borrower is free to pay up the loan and sell the farm to whomsoever he desires.[48] Obviously, if a man can borrow all of the money with which to purchase a farm, and with land values rising as they have been for the last two or three years, he stands an excellent chance of making a profit by selling it five years later at a higher price. Yet he has practically no chance of incurring a loss, because he can let his payments go delinquent at any time, and, under the present laws of many states, regaining possession of a farm through foreclosure often requires one to three years. Of course, the borrower must obtain the Secretary's consent to sell the farm or have the cash with which to pay off the loan. Sales for cash may not be difficult to make, however, if

[48] Unless there are special penalty provisions placed in the loan agreement, a borrower who can sell his farm for cash, or otherwise obtain the funds with which to pay off the loan, will not be prevented from selling at any time. Without such penalty provisions a borrower can sell the farm a month, or even a week, after he receives title. The only recourse the law gives the Secretary is to declare the loan to be immediately due and payable. If the borrower has the funds, which presumably he has if he sold for cash, he can immediately repay the loan. On the transaction he may have made a neat profit within a very short period. It is not certain, moreover, that penalty provisions necessary to prevent such occurrences can be practicably invoked.

land values rise considerably, because a buyer could usually obtain a loan on the farm from some other mortgage agency.

Restrictions on alienation which will satisfactorily prevent the type of land speculation which has just been described are virtually precluded by a program for promoting ownership by mortgage loans. Speculation of this kind can be prevented, however, by the government's purchasing the land and reselling it under an agreement by which title would not be delivered until the purchaser had a substantial equity in the holding. It was for this reason that the President's Committee recommended that title should not be given until the farm had been completely paid for, and that final payment not be accepted until, at least, 20 years had elapsed from date of purchase. A restriction of this nature should not be interpreted to be a means by which the farmer is bound to the soil. The purchaser could be allowed to sell his equity at any time provided that the administrative agency had an option to purchase it, and, in order to make the plan most workable, also the right to approve the buyer. In order to prevent the type of speculation which can so easily arise under the loan program the option on the purchaser's equity should be at a price equivalent to the amount which he has paid on the principal. Under such a scheme the value of a given holding which a tenant is purchasing might be double the purchase price at the time he wants to sell his equity, and yet if the administrative agency exercised its option to purchase his equity, instead of approving some individual who might want to buy it, he would receive only the amount which he had paid on the loan. If, on the other hand, the value of his holding had declined to one-half the purchase price, he would still receive the total amount of the payments which he had made. An administrative agency which exercised its options of this nature in order to prevent its clients from taking a profit from a rise in land values would be morally obligated to prevent them from taking a loss when land values declined. Yet in doing this it would be throwing itself open to severe financial drains during long depression periods when land values are greatly lowered. It was in view of this difficulty that the President's Committee recommended that the Administrative Agency's option on the purchaser's equity should be at a price equivalent to the "current appraised value, sharing with him pro rata, according to the amount of debt remaining unpaid, any increase or decrease in value not attributable to wastage or improvements for which the holder is responsible."[49] From some viewpoints this is a more equitable plan than one under which the equity would be purchased at a price equivalent to the amount which the tenant-purchaser has paid on the principal of the debt. Under either plan, however, unreasonable speculative profits can be prevented without binding the man to the soil.

The second major advantage of a purchase and resale program is that it is more conducive to the promotion of ownership among persons of a low economic status, especially if they have had little experience in managing their own affairs, than is

[49] FARM TENANCY, REPORT OF THE PRESIDENT'S COMMITTEE (Feb. 1937) 12.

the loan program provided for by the new law. If the government buys the land, and leases it to prospective purchasers for a trial period of three to five years before giving them a contract for title, it has a much better method of selecting the families to be aided to ownership than through a county committee. A farmer's ability and integrity can be tested, the family's adjustment to a particular farm can be known, and the inexperienced can be taught to assume the responsibilities of ownership and management. As a consequence, the beneficiaries of the program could be drawn from the lower classes of tenants, sharecroppers, and laborers who are least able to help themselves. It is very questionable, for instance, whether the present law permits the inauguration of a program which will aid the ordinary southern sharecropper and laborer. Only the highest type of tenant can be selected for a loan, unless the Department of Agriculture is willing to assume unusual risks with the funds and the criticisms and expense of carrying through many foreclosure suits. In most jurisdictions it is much easier to regain possession of a farm conveyed on contract, than it is to foreclose a mortgage. Hence, the purchase and resale scheme, such as that recommended by the President's Committee and embodied in most of the tenancy bills considered by Congress preceding the passage of the existing Act, would give the administrative agency more power to supervise the purchaser's farming operations, even after the end of the trial leasing period, than can practically be exercised under the present law. The necessity for supervision is great in the South, and fairly important in many other areas, if any significant proportion of "the underdogs" in agriculture are to be given a secure relationship to the land. It can be provided in the simplest and most straightforward manner by the government's buying suitable land and conveying it in fee simple only after the purchaser has leased it for a period and accumulated a considerable equity in it while holding under a contract for title.

That a purchase and resale program is better fitted than a loan program to areas where land is held in large tracts, or where new land is to be brought into cultivation, is quite obvious. It will be difficult, for instance, for a tenant to purchase 40 or 80 acres from a southern plantation owner unless he is willing to take it near the edge of the plantation. This, of course, is not a serious problem, but there are many instances in which the government might better purchase an entire plantation and sub-divide it into family-sized farms for resale to tenants, than to loan money with which the individual tenants would buy separate tracts from the one large owner. In many areas where new land might be brought into cultivation it is often necessary, or, at least, most economical, to construct drainage or levee systems far too large to be undertaken by an individual farmer, and yet too small to warrant the organization of a special assessment district. In such instances the loan program is of little value, whereas a purchase and resale program would enable the government to bring such land into cultivation. In many areas it would be wise to do this instead of assisting farmers to purchase badly depleted soil now in cultivation.

There are several other ways in which a purchase and resale program would be superior to the individualistic loan program provided for by the present law. Few of these are of importance, however, with the possible exception that a much better spatial distribution of the farms could be obtained under the former type of program. The efficacy of closely settled or village-type farm communities is, of course, a highly debatable question, which need not be entered into here. Most persons will agree, however, that more efficient administration could be had if a score or more of the beneficiaries of such a program were situated within one or two rural communities than if they were scattered over a whole county. Moreover, they might more easily group themselves into co-operatives for buying and selling commodities or for owning large and expensive units of farm machinery. The operations under the present law may, of course, result in many situations where the spatial distribution of the borrowers is very satisfactory. However, the same end could be more consistently attained with a program of land purchase and resale.

In view of the shortcomings of the law which have been discussed it appears that it could be greatly improved by supplanting it with a measure such as the bill (S. 2367) passed by the Senate in June, 1935, and which has been described in earlier pages of this article. The enactment of that bill into law would have permitted the inauguration of a loan program such as that authorized by the existing Act, and, at the same time, would have allowed the development of a land purchase and resale program, such as that recommended by the President's Committee on Farm Tenancy. The same end might now be attained by supplementing the present Act with a new law authorizing the Secretary of Agriculture to carry out an ownership program under a purchase and resale scheme. Except for its inducements to speculation, the loan program is a fairly acceptable means of aiding the tenants with experience, ability and high economic status. But if the southern sharecropper, the migratory laborer of the West, and the maturing farm youth of the Dust Bowl and the Appalachian highlands, are to be given a secure relationship to the land, either through ownership or by other means, the government will have to take that much criticized step of "going into the land business." If land speculation is to be curbed, if states are to be aided and encouraged to enact laws to improve farm leases, and if thousands of heavily indebted owners are to be prevented from losing their farms, much legislation is yet needed. In short, if America is to have increased farm security and a greater stability of rural life, Congress has yet to act.

SETTLEMENT AND UNSETTLEMENT IN THE RESETTLEMENT ADMINISTATION PROGRAM

CLARENCE A. WILEY*

In the by and large, the Resettlement Administration had no particular program which can be said to have arisen strictly out of the administrative set-up which functioned during the period from July 1, 1935, down to December 31, 1936. On the one hand, the program which it administered was an adopted child whose paternal forbear was the F.E.R.A., which later employed tutors and guardians in the form of state Rural Rehabilitation Corporations.[1] The particular phase of the Resettlement Administration's program known as rehabilitation related especially to that portion of its work which was designed primarily to advance subsistence and capital goods to very low-income farmers who, without such assistance, could not continue to carry on their farming operations. This inability to carry on resulted, from region to region or within a given region, from a multiplicity of causes such as, crop failure, foreclosure on land or livestock, loss of supplementary employment, or the occupancy of poor land giving forth only meager yields that had to be sold at depression prices. The other aspect of its program was inherited from the National Resources Committee and attempted to deal primarily with those aspects of the farm problem which grew out of a misdirected, not to say vicious, national land policy.

The program, therefore, cannot be said to be that of any particular national or state governmental agency. It rather represented the consolidated programs of various national and state agencies, some portions of which were designed to be stop-gaps, plaster, and patch-work upon the tattered and smeared agricultural pattern then existing. For the most part they consisted of emergency measures for an emergency situation. Other phases of the program attempted to apply remedies to chronic maladjustments that had been destined sooner or later to bring the distress to agriculture which was in fact ushered in sooner by the depression.

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[1] The legislative and administrative development of the program is discussed in Oppenheimer, *The Development of the Rural Rehabilitation Loan Program, infra* p. 473. ED.

In broad perspective, therefore, the program consisted of two main segments: (1) temporary relief, either as outright grants, or in the form of loans at low rates of interest for subsistence and for capital goods; (2) long-range planning that involved readjustments in land use, more economical sized farms, better systems of farming, feasible cooperative arrangements among farmers, soil conservation, retirement from use of submarginal crop lands, and opportunity for the resettling on good farm lands of farm families stranded on poor land. The entire program was a rather ambitious one, and one which had need for the best administrative and technical advice available in the nation. However, the magnitude of the task, its emergency character, the decentralization of planning (especially in the long-range aspects of the program), the absence of provision for scissor wielders on administrative red tape, the delay in reaching decisions, and frequent changes in policy all contributed to about as much unsettlement as settlement and resettlement in the program. A more complete analysis of the program, with a sympathetic effort to appraise the various methods of approach to the multiplicity of problems presented, will be attempted following a brief survey of the agricultural situation which seemed to justify the gigantic nation-wide attempt at temporary remedial measures and long-range adjustments.

ACUTE AGRICULTURAL APOPLEXY

The health of the agricultural industry has been none too good since its spree of expansion, technological improvement, and land speculation instigated in part by its own initiative and in part as the result of governmental policy during and immediately following the World War. Beginning in the fall of 1920 it began to experience the severe morning-after headache that follows the night before. The conjunction of events thereafter was not such as to permit complete recovery, with the result that the depression struck a weak and tottering industry such a blow that remedial measures were inevitable. The final "stroke," however, was only a symptom of many organic ailments of long standing. This situation was not peculiar to agriculture. Financial institutions, manufacturing establishments, transportation companies, etc., also had taken their sprees and experienced their headaches. Resulting ailments and maladjustments were partly of an emergency character, and in part also of a chronic nature. The cries for governmental succor rose up from every nook and cranny of our economic system. The particular assistance given agriculture, indeed, was different from that administered to non-agricultural enterprises, but only in the extent and degree to which seasoned judgment considered warranted by the exigencies of the situation and the peculiar nature of the industry and its current problems.

The agricultural situation which confronted the nation once the depression had wrought some of its havoc upon the agricultural population may be glimpsed by the following brief summary. Rather early in the depression the nation found itself confronted with the problem of providing food and shelter for a vast army of unem-

ployed of undetermined size. Unemployment was a fact, and the situation demanded action. It was no time to weigh judgments as to the degree of individual responsibility for one's situation. Unemployed farm laborers, dispossessed tenants, farmers who were out of work because they had lost either their teams and tools or their land, and farmers who had some land but insufficient moisture, or were lacking seed to carry on their farming operations, presented largely the same problem as did the unemployed from non-agricultural industries. Others still on the land had made so little and/or got so little for what they made that they were without subsistence for themselves and their work animals until another crop could be harvested. Little work and less credit were available under the existing situation. Therefore, when the F.E.R.A. was established in May, 1933, many rural cases were cared for under the program, especially during the following winter months. Under the above program cash grants were made to the several states for direct or work relief under federal supervision. In the fall of 1933 the C. W. A. was set up to provide jobs for those unemployed and for those whose incomes from employment were deemed inadequate to provide reasonable subsistence. In the spring of 1934 this feature of the program was displaced by the work relief program of the F.E.R.A. The intention was to give jobs to relief clients in order to dispense with direct relief because of the disfavor with which the "dole" was generally regarded. But work relief was less available to unemployed farm laborers and heads of other distressed farm families than to the unemployed in other fields, unless they migrated to the villages and towns, a thing which many of them did.

In the process of aiding needy farm families, it soon occurred to F.E.R.A. officials that these families logically fell into two main categories. First, there were those who needed only subsistence for themselves or their livestock, and funds for medical care, clothing and planting seed. When work relief was given, wages were usually credited against advances made. Practically all distressed farmers in the western drought area were cared for in this manner, up to the spring of 1935, on their purchases of feed. Along with work relief there was also a greater or less volume of direct relief grants, varying of course from one family or locality to another. Second, it was evident that there were many farmers (and farm laborers to a lesser degree) who could become self-supporting if given advances in cash in the form of loans with which to buy teams, tools and equipment, seed, and fertilizer in addition to grants for subsistence. Loans and grants of this sort were designated "rehabilitation" on the assumption that this policy would eliminate recurring direct relief grants. Consequently, in the spring of 1934 by administrative order a separate Rural Rehabilitation Division was charged with the responsibility of handling the needs of distressed farm families in the western drought area.

At the expense of the omission of a vast amount of detail incident to the administration of the program, the chief point of interest here is to indicate the magnitude of the task involved, and the national scope of the program. By the winter of

1934-35 something over one million farm and farm laborer families[2] were receiving relief grants and/or rehabilitation loans, a fact which is indicative of the extent of rural distress. Indeed, approximately two million families received relief at one time or another during the depression. A significant fact about this tremendous number of distressed farm and farm laborer families is that the bulk of them was concentrated in fourteen states representing only one-fourth the farms of the United States. This peculiar situation points very definitely to the conclusion that there is a distinct causal connection between the ratio of distressed families to total farm families in an area, and the particular rural economic and social patterns of that area. The fourteen states in order of their ratio of farm operators receiving relief to all farm operators in the state are as follows:

	Ratio on relief		*Ratio on relief*
New Mexico	36	Idaho	17
South Dakota	33	Montana	13
North Dakota	27	Minnesota	12
Oklahoma	27	Pennsylvania	12
Colorado	22	Arkansas	11
Kentucky	19	South Carolina	11
Florida	18	Wyoming	10

These fourteen states may be definitely classified according to the predominant feature, or features, responsible for agricultural distress. In the main, they are external to the economy of the individual farmer, and therefore, largely beyond his control. Chief among these by states were:

Drought	*Abandonment or removal of industry*	*Physical features: poor land, rugged, eroded. Overpopulated*
New Mexico	Pennsylvania*	South Carolina
Oklahoma	Kentucky*	Arkansas
Colorado	Florida*	Kentucky*
Idaho	Minnesota*	Pennsylvania*
Montana		Florida*
Wyoming		
North Dakota		
South Dakota		
Minnesota*		

* States affected by more than one factor.

The above classification of causes for distress in agricultural areas is perhaps in categories too broad to reveal significant implications with reference to individual farm problems. For this reason, it should be broken down, and numerous other contributing factors added. Moreover, additional light can be thrown on the nature of the problems, in so far as they were either directly or indirectly causes of recent

[2] It is important to note, however, that all these families were not currently engaged in agriculture. Many of them had left the farm earlier in the depression to seek employment in villages and towns. On account of their usual occupation they were classified as farm families.

farm distress, by classifying them as (1) more or less temporary contributing factors and (2) long-run factors contributing to maladjustments in land use and to low farm family net incomes. Some attempt, therefore, has been made in the table below to arrive at such a classification, however inadequate it may be.

Chief emergency, or short-run factors	*Chronic, or long-range factors contributing to current maladjustments*
(1) Drought	(1) The pressure of rural birth rate in relation to rural economic opportunities
(2) Floods	(2) The use of sub-marginal lands for cropping purposes
(3) Loss of job	(3) Soil depletion resulting from uneconomical farming practices
(4) Foreclosure on livestock and/or farm	(4) Farm units too small
(5) Dispossessed as tenant	(5) Failure to adopt farming systems adapted to character of an area
(6) Loss of assets through depression prices or otherwise	(6) The depletion of natural resources, frequently timber, which normally provided supplementary employment
(7) Death or ill health of earning member of household	(7) Over-capitalization of land values
(8) Unavailable credit resources	(8) The swelling intensity of institutional forces conducive to inequality of rural opportunity, resulting in poverty, tenancy, and large numbers of unattached laborers.
(9) Low purchasing power of farm products incident to the depression	

It was the incidence of this multiplicity of emergency and long-run factors which fell with crushing weight upon approximately one-third of the farm families of the nation at one time or another during the depression. So far as the rural problem was concerned, it was with this large and widely scattered group of afflicted rural families that the F.E.R.A. and the Rural Rehabilitation Corporations attempted to deal. A cross section of this group in June, 1935, reveals 138,000 farm owners, 280,000 tenants (other than share croppers), 44,000 share croppers, and 147,000 farm laborers. From this cross section of those in need of aid, it is evident that great variation existed as to (1) the causes of their distress and (2) the type of aid which would be most effective.

For all those who still had land and livestock to carry on current operations, or begin another year's crop, but whose liquid assets had been exhausted, and whose current incomes had been depleted or reduced to nothing, the need was primarily for an immediate source of income. This could be provided in the main only from work relief or direct relief grants. Whenever work could be provided by F.E.R.A., or C.W.A., wages were paid in cash or credited against relief grants, provided they were loan cases. Still another group comprised low-level owners, some tenants, many share croppers, and perhaps a still larger proportion of farm laborers who were partially or wholly deficient in either land, livestock, or tools and equipment. These

needed aid of a little different character, else relief grants would be ever-recurring events. Farmers who had an even chance or better to attain a self-supporting status, provided they could receive advances temporarily in the form of subsistence and capital goods, were eventually transferred from the general relief rolls to the custody of the Rural Rehabilitation Corporations. Farm operators carrying on in this capacity were thereafterwards referred to as rehabilitation clients.[3]

On this basis of selection, it is evident that a large majority of such clientele would be located in the southern states where poverty and illiteracy held their strongest grip. More farm operators, both white and black, who were deficient either in land, or teams and tools, or all of these at once, could be found in the South than in any equal area in the country. Accordingly, in February, 1935, more than ninety per cent of rehabilitation clients were located in ten southern states. For the most part, then, the rural rehabilitation program in the South was a device for "furnishing" croppers and tenants, although smaller percentages of farm owners and farm laborers were included in the program. However, during the spring of 1935 the number of rehabilitation cases increased very markedly in the Southwest and the far Middlewest because of an administrative ruling which required the Rural Rehabilitation Division of the F.E.R.A. to include drought relief cases within the scope of its activities. With the arrival of June, 1935, the number of rural rehabilitation cases had swelled to 203,612, to say nothing of the hundreds of thousands of other rural families receiving either outright grants or work relief.

On the basis of the foregoing analysis, it is readily apparent that the fundamental purpose of the rehabilitation program was twofold; namely, first, emergency relief to a selective group of farm operators, and, secondly, rehabilitation through long-range corrective measures by means of constructive individual farming programs for the clients concerned. But to other agencies of the Resettlement Administration were left the broad aspects of the problem of long-range adjustments through the instrumentality of resettlement and land use planning. In regard to the first aspect of the rural rehabilitation program, according to the original intent of administrative officials when the Rehabilitation Division was set up, it was undoubtedly contemplated that the program emphasize long-range corrective measures through planned farm programs for rehabilitation clients. The chief purpose of the Division as originally declared was to "assist destitute farm families and other families residing in rural areas to become self-supporting and independent of emergency relief aid." This evidently meant more than a mere reclassification of the grants which such clients were to receive. But in so far as the program consisted of "furnishing" tenants and croppers (a service which landlords used to render but now could not, or would not if the government would do it) and of providing aid to drought families for the purchase of feed for livestock, the Administration was merely functioning as an emergency agency.

[3] If a farm operator was receiving both relief grants and rehabilitation advances, he was regarded as a rehabilitation client.

During any given month only a small portion of the total rehabilitation cases may have received advances during that month, since advances of funds during previous months to an individual made of him a rehabilitation client until the loan was paid provided he was still a participant in the farm rehabilitation program. Accordingly, in December, 1935, advances were made to 156,000 individual clients, 2600 of which were loan cases and 130,000 grant cases.[4] This particular month, however, was an unusual one in this respect. For the most part, during the entire program, advances to rehabilitation clients were for the purchase of capital goods rather than for subsistence goods in the ratio of about three to one, varying of course from time to time and place to place.

In so far as the objective of the rehabilitation program was to raise the tenure status and economic position of submerged farm operators and farm laborers by means of long-range individual farm programs, it no doubt did not achieve its goal. Relatively few farm laborers and share croppers were made tenants, and in instances where such was the case, there is little evidence that the conditions and circumstances under which they were to operate could provide more than an element of security at a very low level of living. For the most part, they were merely removed from dependence upon certain types of work relief. Even then, much relief had to be provided for many rehabilitation clients because their small-scale farms offered no assurance of an independent existence. It is true, each rehabilitation client was supposed to have prepared for him by his immediate rehabilitation supervisor comprehensive farm plans that would eventually leave him actually rehabilitated—a moderately prosperous, self-respecting farm operator. This result, however, has not been achieved, and primarily for the reason that such farm plans as were made for clients were carelessly and hastily drawn up with one chief end in view, namely, that of getting subsistence from the soil in lieu of emergency grants and work relief. The program was largely in effect only work relief in tilling small individual plots of poor soil with teams and tools of poor quality, most of which were purchased with F.E.R.A. funds at highly inflated prices. In the main, the client was restored to an economic and tenure status of a character which had been largely responsible for sending hundreds of thousands to the relief rolls. His position achieved security so long as federal funds were forthcoming, but it was not one which by any means would establish him as an independent producer eventually able to weather the tide of another depression without public aid. More constructive land use adjustments and farm programs altogether unlike those which had contributed to the agricultural distress were universally regarded by land use experts as indispensable. The Land Policy Section of the National Resources Committee, the Land Use Planning Section of the Division of Land Utilization of the United States Department of Agriculture, and various other federal and state agencies had made a start in tackling the chronic maladjustments contributing to agricultural distress from a long-range

[4] *Farmers on Relief and Rehabilitation*, W. P. A., DIV. OF SOCIAL SCIENCE RESEARCH (1936) p. 22.

point of view. It was, however, at about this point in the development of the emergency and long-range aspects of the entire rehabilitation and readjustment program that the Resettlement Administration took over the entire job.

THE RESETTLEMENT ADMINISTRATION'S INHERITANCE AND SUBSEQUENT PROGRAM

On July 1, 1935, the Resettlement Administration took over the administration of the rehabilitation and resettlement programs initiated by F.E.R.A., and also the major portion of the work started by the Land Policy Section of the National Resources Committee, and of the Land Use Planning Section of the United States Department of Agriculture. The chief objective in this change in administrative setup was to coordinate under one agency both the corrective measures of an emergency character and those aimed at evils of a long-run character which had contributed largely to growing agricultural distress for a number of years prior to the depression.

Thus, with this twofold objective in mind, the major portion of its program logically fell along two chief lines of action: first, the continuation of the rehabilitation program of the Rural Rehabilitation Division of F.E.R.A., and, second, the making of land use adjustments as a long-time program to prevent the continuation and/or recurrence of the situation with which the Rehabilitation Division was then trying to cope. The former line of action was carried on much as it had been done by the State Rehabilitation Corporations, except perhaps with less dispatch—because of the hierarchy of organization—and in that the policy of leasing land (at exorbitant or other prices) for occupancy by rehabilitation clients was largely discontinued—one policy much to its credit. The type of assistance which was afforded farm operators was, in the main, in the form of cash advances for (1) subsistence and (2) capital goods[5] to be used upon the land on which they were then located or possibly might subsequently live upon. This aspect of rehabilitation was termed rehabilitation "in place" in contrast to the "resettlement" of families from poor land areas in areas of better land if rehabilitation under the latter circumstances seemed more feasible. Of course the "resettlement" of families under more favorable circumstances in new land areas was essentially a long-range program which could be effected only through a thorough study of the problem of desirable land use adjustments. In this connection, theoretically at least, much emphasis was to be placed upon the advice and counsel of land use planning specialists. This portion of the program was more difficult and, therefore, received relatively less attention. Yet, while this aspect of the program was the one in which much lasting good could have been achieved, because of lack of coordination in planning and because of divided responsibility in the details of procedure the results fell far short of the possible maximum in view of the personnel and funds available for instituting a

[5] "Subsistence" goods referred chiefly to those necessary for current keep of the family and of work stock. "Capital" goods included durable goods used in the production of a crop.

constructive program—an aspect which will be analyzed more at length in the succeeding section.

The strictly rehabilitation "in place" aspect of the program tapered off largely into one of advancing loans to needy owners, tenants, share croppers, and a few former agricultural laborers, to all of whom the usual avenues to credit were then closed, especially the resources of the Farm Credit Administration. Rehabilitation "in place" was, therefore, more nearly just another venture of the federal government in the extension of credit to high-credit-risk farmers than it was anything else. While associated with the Resettlement Administration, the writer received on his desk many letters forwarded from offices of the Farm Credit Administration which it had previously received from farmers pleading for credit based upon some shady security which was deemed an unjustified risk by the latter agency. This class made up the recruits to rehabilitation. In fact, any potential client who could secure credit from any other source was unacceptable to the Rural Rehabilitation Division.

There is no intent at this point, in the least, to disparage the liberal extension of credit to distressed farmers who cannot offer the security demanded by so-called sound banking practice—not that at all. The point simply is that such a policy partakes more of the character of an emergency measure than of a long-range, constructive readjustment—unless there is some fundamental basis for the contention that the chief factor contributing to agricultural distress has been the deficiency of farm credit. On the contrary, in all the literature on the subject of the factors contributing to the gradual decline of agricultural prosperity, we seldom, if ever, see the declining availability of credit listed as a factor. In fact, during the past few decades when the level of agricultural welfare has shown signs of sinking most rapidly, there has been a gradual extension of credit available to the farmer on more favorable terms than ever. The federal government through the Farm Credit Administration has contributed more than its share to this development. Under present day conditions a farmer's lack of security and the unavailability of credit to him are usually results of his distress and not its causes. The influence of institutional arrangements conducive to the poverty of certain classes can hardly be overcome by the creation of debts.

Quite true, to a certain degree, the availability of credit is a factor in the success or failure of an individual farmer, but the presence of credit alone is no assurance of success—the thing in itself has no particular value. It is the efficient-production functioning of credit which renders it a real asset in individual farming operations. Intelligently granted credit should constitute the means by which the individual farmer commands land and instrumental wealth commensurate with his ability to set up an efficient, economic farming unit. Furthermore, such credit wisely placed should result in a value ratio of output to input which exceeds 1, else there can be no net value return for his operations. The first essential, therefore, in an analysis of the value of his operations is to regard credit as *means* and not as *end*.

Accordingly, this point of view leads to several corollaries of the original proposition, namely, (1) the credit must not be used to purchase over-valued instruments in the form of land, teams, or tools; (2) it must be adequate to equip an economic farm production unit; (3) the expenditure of credit must be apportioned among land and other capital goods according to the system, or systems, of farming best adapted to the area. Practically every one of these fundamental principles was widely and consistently violated throughout the program, especially where rehabilitation was instituted as if it were a program solely to get rural people off direct and work relief by placing them back on the soil primarily to raise their own food.

Apropos the first principle mentioned above, the reader should recall that many rehabilitation clients, especially those who by usual occupation were share croppers or farm laborers, for the most part had neither land nor teams and tools to farm on their own account. These had to be provided by the Rehabilitation Corporation operating in a particular state.[6] Good land in most instances was not available from landlords for occupancy—and especially perhaps for only temporary occupancy—by tenants of the type that for the most part were being rehabilitated. Consequently much poor land was purchased or leased at prices which under normal circumstances would have secured lands of the best quality. Such lands were subdivided into small tracts, often not more than five or ten acres, and to most of them old shacks had to be moved or in other cases hovels existing thereon had to be renovated. The construction of fences, barns, and sheds, and the digging of wells presented other problems. It was in the administration of this part of the program that its weakest links were to be found.

Had it been a matter of paying the cash rent, or lease money, for land upon which an existing tenant was residing, and of advancing money for teams and tools which he had already committed himself to pay for, the task would have been greatly simplified. However, no such easy situation existed. In the first place, land had to be bought or leased. The latter course usually was followed. In lieu of direct payment of rent to the landlord, the Rehabilitation Division (then within the F.E.R.A.) was to apply the lease money to the erection of improvements upon the land in an amount not to exceed the value of the lease for a period ranging from one to five years. This amount became the obligation of the client who was to be rehabilitated thereon. The rehabilitation applied chiefly to the property of the landowner, but since he could not feel assured of the usefulness of such a small tract of land thus improved after the expiration of the lease period, and was skeptical at times of the character of the man placed thereon, he wanted for the use of the land a sum commensurate with its average productivity plus liberal compensation for the risks involved. Necessarily the client, then, was obligated to pay for the use of his land a sum more than its productivity—at times, for only a three or five year's lease, a sum which would have been sufficient to give him title to the land in fee simple.

[6] Authorization had been granted to both the Resettlement Administration and Rehabilitation Corporations to expend money for the purchase or lease of land as well as to buy livestock and equipment.

He had little choice in the matter, since arrangements for the land were made by his immediate rehabilitation supervisor. He could accept the terms or go unrehabilitated.

But this was only the alpha of his difficulties. Neither he nor his immediate rehabilitation supervisor could assume the responsibility of erecting or remodeling the house, constructing the outbuildings, or digging the well, etc. The development work was turned over to the Work Division of the F.E.R.A., which for the most part utilized relief labor in making the designated improvements. The assumption was, of course, that the contemplated improvements could be completed within the allowance made for the lease or rental of the land. It usually turned out like the farmer's bread and molasses—they would not come out even, and the improvements often were only partially completed. When the money allotment for such work was exhausted, there were no additional funds available for the completion of the job. The landowner would not do it for the benefit of the client or the government; the tenant would not do it if the improvements were immediately to become the property of the landowner; the government could not add more to the bill in payment for land which the client had not gotten.

Nevertheless, when this stage of development was reached, it was perhaps already March, or April, perhaps even well up in May. The time was long past for the client to move into his new rehabilitation location. Not even the earlier preparations for a crop, those ordinarily made by January 1, such as plowing the land, had been started. Despite these handicaps, when he moved in, he probably found a shack with no floor, or if a floor, only a partially completed roof. Possibly the shanty had been completed, but he found no shed for his chickens, no barn for feed, or even a pen in which he could keep his mule (also sadly in need of rehabilitation) to prevent his straying over the crops that possibly would be growing later. If he had proceeded to the back yard, he would have found perhaps a well dug almost to water, but not quite. Yet the Work Division, having already exhausted the funds allotted for development, had moved elsewhere to repeat its haphazard performance. Possibly for the duration of his stay on the place the client would have to haul his water on a sled from some well or spring a mile or two away.

An incident, which is rather amusing—but not to the party involved—was the experience of a client on such a partially improved location in East Texas. He had a mule with eyes none too good, but the mule had neither pen nor pasture. The farmer also had a well, but the well had no water, nor did it have a cover over it. The mule, while slumbering one night, walked in his sleep. Fate determined that he should fall in the well, but the well was not a very deep one. The client had neither the means to remove the unhappy mule, nor the authority to hire anyone at government expense with equipment to get him out. He could only notify the rural supervisor, who, upon consulting his rehabilitation Hoyle, found that the use of government funds was permitted only for the purchase of subsistence or capital

goods. Nothing could be found pertaining to expenditures involved in getting a client's mule out of a well. The State Office was immediately notified, but matters involving deviations from the letter of the law had to clear through the Regional Office in Oklahoma, which also had to consult Washington on similar matters. The last report was that the mule was patiently waiting while officials conferred on rules of procedure. This incident, of course, is a rare case, but occasions were numerous in which the procedure bogged down in red tape and rigid rules of order. Those in the field charged with getting the job done had a superabundance of responsibility but very little authority. On the whole, the motives were worthy, but the means to the ends were circuitous and expensive. All the while the advances of funds, even for unfinished work, were charged to the account of the client.

The program would not have looked so gloomy had a client worthy of the effort been giving a farming unit somewhere near the economic family-sized unit prevailing in his area. On the contrary the client was set up under conditions not greatly different from those which were generally accepted as contributing factors to his inability to weather the storm of the depression. It can be called "rehabilitation" in the sense that the clients were provided for so long as federal funds were forthcoming, or in that they were not still on work relief. But the program is hardly "rehabilitation" from the standpoint of a corrective program that looks toward permanent readjustment with the view to achieving higher standards of living with a modicum of security from a repetition of their existing distress.

By way of summary, rehabilitation clients, in the main, were located under the following conditions:

(1) On relatively small farms, a factor which is a large contributor to existing maladjustment.

(2) The land was usually relatively poor, nationally recognized as a depressing factor.

(3) Both land and equipment were frequently purchased at inflated prices.

(4) Farm plans provided chiefly for the growing of subsistence goods only, which at best should constitute only about 35% of the normal farm family budget.

(5) The small-scale setup frequently contemplated only part-time farming, *i.e.*, that a client would find employment outside of farming to supplement his deficient farm income. Part-time farming is worthy of consideration in most farming areas of the United States only if the part-time farmer's outside employment is sufficiently remunerative to allow him to forget his farming. When times are good, he probably can do this; when depressions hit, he has no job, and his small subsistence patch becomes only a squatter's plot, and the part-time farmer becomes a relief client.

(6) Practically all clients were located only on arable land while the aptitudes and experiences of some better qualified them for gaining a livelihood in the production of livestock.

(7) The particular systems of farming best adapted to the locality in which the client was located had little influence upon the size of his unit or the nature of the program outlined for him.

(8) The depths to which one had sunk, and the character of his needs were relatively small factors in determining whether he was chosen for rehabilitation. Generally the

lower his position the less likelihood he had of becoming a client. Relatively more owners and tenants than share croppers and laborers were selected for rehabilitation. In proportion to their numbers, only half as many negroes were selected for rehabilitation as were whites, and when selected, advances received by them were hardly half those received by white clients in similar stations.

(9) The amount and quality of the teams and tools assigned a client were hardly commensurate with the amount of land allotted him, thus sacrificing the efficiency of an optimum relation between the man, land, and equipment factors of production.

The plight of the rehabilitation client can be inferred from the table below of the sizes of farms operated by relief and rehabilitation clients, and of those operated by all farmers (even including those on relief) during the year 1935.

COMPARATIVE SIZE OF FARMS OPERATED BY ALL FARMERS, BY AREAS, AND TYPES OF TENURE, AND THOSE OPERATED BY RELIEF AND REHABILITATION CLIENTS[7]

	Average Number of Acres per Farm		
Average by Areas			
All Areas:	*All Farmers*[a]	*Relief Cases*[b]	*Rehabilitation Cases*[b]
Owners	171	38	43
Tenants	126	26	43
Croppers	40	23	28
Eastern Cotton			
Owners	116	37	38
Tenants	64	20	33
Croppers	37	19	27
Western Cotton			
Owners	176	33	33
Tenants	113	76	31
Croppers	52	28	33
Appalachian-Ozark			
Owners	83	24	44
Tenants	56	10	40
Croppers[c]	—	—	—
Lake States Cut-over			
Owners	97	29	58
Tenants	110	45	70
Croppers[c]	—	—	—
Average by Types of Crops			
Hay and Dairy			
Owners	114	46	58
Tenants	134	76	92
Croppers[c]	—	—	—

[a] U. S. CENSUS OF AGRICULTURE, 1935.
[b] June, 1935.
[c] No share croppers, or only negligible amount.

[7] Adapted from *Farmers on Relief and Rural Rehabilitation, op. cit. supra* note 4, Tables 22 and 23, pp. 64 and 65.

Corn Belt			
Owners	157	77	87
Tenants	164	103	120
Croppers[e]	—	—	—
Spring Wheat			
Owners	745	348	360
Tenants	482	332	341
Winter Wheat			
Owners	423	144	198
Tenants	304	96	159
Croppers[e]	—	—	—
Ranching			
Owners	899	162	149
Tenants	445	120	160
Croppers[e]	—	—	—

An analysis of the data above reveals a most striking contrast in the size of farms operated by farmers on relief and rural rehabilitation within given areas. They point also rather conclusively to the chief determining factor in the causes of the distress, as well as to the road to reconstruction. An interesting side-light here is the observation that distressed so-called "owners" usually operated smaller farms than did tenants in the immediate vicinity. This is conclusive evidence, it seems, that ownership without respect to equity and to the adequacy of the farm unit may represent a process of "freezing" on the agricultural ladder rather than of *ascending* it. We too frequently talk loosely of *climbing* an "agricultural ladder" that is lying flat on the ground. Despite the implications involved, many Resettlement Administration officials have fostered the participation of tenants in what must remain a form of useless exercise, unless, and until, there is an intelligent attack on the institutional factors conducive to poverty and, therefore, tenancy. For example, in the Lake States Cut-over Area, 78% of the rural relief cases represented owner-operators who could exist only at a relatively poor level even in normal times. Ownership of uneconomic farm units on poor land is no indication of any successful climb up the agricultural ladder. For the most part "ownership" is only a legal concept which has had assigned to it any number of economic implications which essentially it does not possess.

Also, with respect to the amount and value of livestock and equipment possessed by the distressed owners on small-scale farms, the owner-operators were at a disadvantage in comparison with the better grade tenants who had put the whole of their limited capital into teams, tools, and equipment rather than a portion of it into poor land, resulting in a deficiency of each factor of production. Likewise, tenants on relief were deficient in the ownership of these means of production as compared to those owned by their associates off relief and rehabilitation. All these major factors of production represent wealth, which represents earning capacity by some one somewhere along the line. What American farmers in chronic distress need, therefore, is more earning, or income-yielding, capacity. For the most part this end

can be achieved more effectively through long-time planning than through short-time lending.

Even though rehabilitation as has been carried on has its merits as an emergency measure, the exigencies of the situation in such a time preclude the possibility of the adoption of the most effective measures for long-run results. The rational thing to do is to avert the possibility of distress by making adjustments during normal times in land use, the distribution of the rural population, and in existing systems of farming. It was the early recognition of this fact which accounted for the establishment in the Resettlement Administration of the Division of Land Utilization, and, within this division, of the Land Use Planning Section. But here again the machinery could not "click" properly, largely because of the division of responsibility in numerous matters of procedure.

SOME UNPLANNED PLANNING

The recognition of the need for planning is one thing; to get plans made for executing planning is quite another thing. To be agreed upon the objectives is not so difficult, but the matter of what agencies, or sub-divisions, of a large organization like the Resettlement Administration were to determine the *means* to achieve the desired *ends* brought many delays and numerous blue-prints of plans back from Washington to be done all over again. Often before the required revisions could be made, some axe wielder in a particular section had changed his mind, or emergency funds had been reshuffled, and the revisions also had been for naught.

The king pin in the set-up logically was planned land use. But the execution of this program involved an almost inestimable number of laborious processes, chief among which were the following:

(1) An inventory and classification of the land supply of the nation.

(2) An analysis of the nature and location of maladjustments in land use.

(3) An analysis of the nature, extent, and location of necessary readjustments to be made.

(4) The determination of the extent and location of sub-marginal land areas used for cropping which logically should be retired from such use and more appropriate uses found.

(5) The determination of the number and the location of families that might be involved in plans for relocating them on better land.

(6) The selection of suitable resettlement areas, and the planning, construction and development of resettlement projects.

(7) The optioning, appraisal, and purchase of lands for resettlement, retirement, or reforestation as the particular situation may warrant.

(8) The legal work connected with the examination of abstracts, deeds, etc.

(9) Processes incident to making payment for lands leased or purchased.

(10) Architectural work in connection with the planning of farm houses, the erection of community social centers, cooperative canning plants, etc.

(11) Engineering work in connection with the construction of buildings, roads, drainage systems, etc.

(12) Business management functions incident to the stocking of supplies, the issuance of travel orders, handling the mailing and filing system, etc.

(13) Accounting work in connection with keeping records of money spent and still available, issuing salary checks, etc.

The list could continue almost without end. All in all, there was an effort to group these various tasks into several divisions, each of which was divided into sections and these into units and sub-units. However, since the chief objective was planning, there should have been a classification of the various divisions into (1) policy-determining divisions, and (2) service divisions. The function of the latter would have been to serve more or less as auxiliary units in the execution of plans. There was much talk of policy-determining functions, and policy-executing functions, but nobody could feel sure who had what. The intricacies were legion, but a specific case will suffice to illustrate the major aspect of the problem.

For instance, the work of the Land Use Planning Section was to be basic to the entire program. It classified the land, designated the sub-marginal land areas for retirement and the areas for resettlement. It had the responsibility for designating the areas where the farms were too small, where the farming population was pressing upon rural opportunities, and the areas where certain systems of farming had the greatest likelihood of succeeding. If only it had had the authority to follow through the various steps in the process of readjustment, there probably would have been much less done for which it was generally felt that someone owed an apology.

When the Land Use Planning Section designated an area as suitable for resettlement, this was done because of evidence that it was a "good" land area. But good land is only a relative rather than an absolute concept. It is good only in relation to a certain price limit, in relation to certain types of crops, farming systems, and especially only in relation to the size of farm unit set up for which the area is best adapted. A most important factor also is whether it is good enough for one thousand dollars' worth of land to support an additional investment overhead (largely non-productive) of some five or six thousand dollars. Even a good resettlement area is not fool-proof against every conceivable sort of farm management blunder, procedure to the contrary notwithstanding.

Once the selection of the area was made, it then fell into the hands of one or more development units. An engineer could (and did in many instances) plan to run roads through the middle of the best crop land section, he could locate farm residences a half mile from the pasture land, or cut the whole resettlement area, grid-iron fashion, into sixty-acre blocks without regard to the amount and quality of the land which fell into each tract. Those responsible for the planning and erection of farm houses could plan $5,000 homes with hand-finished floors and shellacked knot-holes on a tract of land that would stagger under the weight of a $2,000 structure. The selection of the area might be made on the assumption that not less than eighty acres could possibly constitute an economic family unit, and some one would come down from Washington with ready-made plans for units consisting of only 24 acres. This identical thing happened in connection with program planning in the old

Southeast after the Land Use Planning Section recommended not less than eighty-acre tracts, and felt a bit apologetic for doing that.

Furthermore the Rural Rehabilitation Division was permitted to carry on its most intensive program of rehabilitation in areas which the Land Use Planning Section had already designated as definite "Problem Areas," and where the continuation of farming operations should have been discouraged. The production of crops was recommended for many farmers whose aptitudes would have assured greater success on larger units utilized for combination livestock-crop farming. Within a given resettlement project farms were almost without exception of uniform size, ignoring the differences in individual managerial capacities and the size of families. A farmer in a designated sub-marginal land purchase area could option his land to the government, and wait possibly a year and a half before the Legal Division could pass on the abstract of title so he could obtain his pay. In the meantime, land values might be rising and farms once available already taken up. He was a big loser for his reluctant cooperation, and maladjustments were being incubated almost as fast as readjustments were consummated.

Of recent date, however, developments point upward. An old, established agency, the United States Department of Agriculture, has inherited the task of carrying on. It has a large corps of well-trained technicians. The emergency period of the program has apparently passed. Another encouraging sign is the fact that steps already have been taken in Washington to coordinate activities in all phases of land utilization work. If this objective can be achieved, and authority can accompany responsibility, lasting adjustments may yet be wrought. At any rate, the critical nature of the problem warrants the best job that human ingenuity can give to it. It will be better that it be poorly done than not tackled at all.

THE DEVELOPMENT OF THE RURAL REHABILITATION LOAN PROGRAM

MONROE OPPENHEIMER*

The enactment of Title II of the Bankhead-Jones Farm Tenant Act[1] marks the probable transition of the rural rehabilitation loan program from an emergency relief measure into a permanent activity of the Department of Agriculture. It is, therefore, particularly timely to consider briefly the objectives of the program and to review its development and present legal and administrative techniques.

OBJECTIVES OF THE PROGRAM

The rehabilitation loan program is designed to aid destitute and low-income farm families in becoming self-supporting at a decent standard of living, by the extension of credit for operating goods, furnished upon the basis of individual farm and home management plans, and through the provision to such families of the advice and guidance necessary for the successful completion of such plans. A brief summary of the economic and social justifications for this program is found in the *Report of the President's Special Committee on Farm Tenancy*,[2] which pointed out that approximately 420,000 farm families, already near the bare subsistence level, had been forced below it by agricultural depression, that 500,000 or 600,000 families, normally well above the subsistence level, had, largely as a result of drought, exhausted their resources of capital and credit, and that another large class of farm families, including "probably the great majority of the 1,831,000 tenant and cropper families of the South," is obliged to seek operating capital at crippling rates and under such conditions as to perpetuate the cash-crop system. The *Report*, in developing the type of loan program suitable for these classes of farm families until they are able to qualify for bank credit, stressed the need of technical guidance to assure an effective expenditure of funds and stated that "a primary objective" of the system of rehabilitation loans "should be to stimulate the development of better lease contracts." The

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[1] 50 STAT. 522 (1937), 7 U. S. C. §§1000-1029.

[2] FARM TENANCY, REPORT OF THE PRESIDENT'S COMMITTEE ON FARM TENANCY (Nat. Resources Comm., 1937) 14-15 (also printed as H. Doc. No. 149, 75th Cong., 1st Sess. (1937)).

belief was expressed that the "best of these farm families can be built up to the stage where they can undertake the purchase of a farm."

Of course, as the *Report* itself points out, the rehabilitation program deals with only one aspect of the problem of farm tenancy and farm destitution. Obviously, neither credit nor advice and guidance can restore eroded land, prevent ruinous fluctuations in farm prices, or increase the purchasing power of industrial workers for farm products. Likewise, credit and education alone cannot give security to farm tenants, in regions where tenure is traditionally unstable, until a more rational landlord and tenant relationship is established.[3] Furthermore, the program cannot cope with the problems of migratory farm labor.[4] For these reasons, other measures must supplement and parallel the rehabilitation loan program if substantial progress is to be made in relieving existent, and forestalling the further spread of, rural destitution. In addition, the present rehabilitation program proceeds upon the assumption of the continued economic feasibility of the family size farm. To the extent that this assumption may prove untenable, because of technological developments and a consequent trend towards the industrialization of agriculture, the techniques of the present program will have to be substantially modified.[5]

Notwithstanding these limitations, the tangible achievements of the rehabilitation loan program[6] were deemed by the *Report* sufficient to justify its recognition as an essential part of a really comprehensive attack upon the farm tenancy problem.

[3] *Id.* at 17-18. The report recommended various improvements in lease arrangements through state legislation as well as "vigorous programs to inform landlords and tenants concerning methods of improving farm leases."

[4] *Id.* at 15-16.

[5] The community pattern adopted in the planning of some of the "rural resettlement" projects of the Resettlement Administration was designed to take advantage of such technological developments. FIRST ANN. REP. RESETTLEMENT ADM. (1936) 33: "It would be both impossible and unwise to stem the tide toward mechanization. An effort must be made so to organize agricultural production that the advantages of mechanization and mass production in agriculture can be secured without losing the social values which have always been associated with rural living, and, also, to avoid the difficulties which arise from employer-labor and surplus income problems." *Cf.*, also, Mitchell, *Cabins in the Cotton* (1937) 92 NEW REPUBLIC 175; Horne and McKibben, *Mechanical Cotton Picker*, W. P. A., NAT. RESEARCH PROJECT, STUDIES OF CHANGING TECHNIQUES AND EMPLOYMENT IN AGRICULTURE, Report No. 2A (1937.)

[6] As of March 31, 1937, 46.6% of maturities on loans outstanding throughout the country had been collected. The percentages of collections in states which were not affected by floods and droughts were much higher. See Hearings before the Subcommittee of the House Committee on Appropriations on the Emergency Relief Appropriation Act of 1937, 75th Cong., 1st Sess. (1937) 14-15. Since the borrowers were in the main destitute at the time loans were made, and, particularly in the South, were lacking in sound farm management training, the record seems surprisingly good.

Comprehensive data are not available as to the specific progress made in raising the standard of living of borrowers. However, the following figures from two states are presumably representative: In Alabama, from 1935 to 1937, after adoption of farm management plans, the average cash farm income of rehabilitation borrowers was raised from $91.00 per annum to $460.00, and the average net worth raised from $3.03 to $362.00. During the same period, the percentage of clients working mules or mares—instead of steers—was increased from 13% to 81.37%. Besides increasing the cash income, the farm management plans appear to have assured an increase in the production of food for home consumption. Thus, the ownership of milk cows by rehabilitation clients was raised from 47.5% to 79.1%, of meat hogs from 61.1% to 83.3%, of brood sows from 19.2% to 42.1%, and of poultry from 79.1% to 95.6%.

Similarly, the accomplishments of the home management plans are graphically illustrated by the following data from Arkansas: In 1936 approximately 6,000 steam pressure cookers had been acquired by rehabilitation clients from their loan proceeds. With this equipment, approximately 3,000,000 quarts of

DEVELOPMENT OF THE PROGRAM

Origins. Under the Federal Emergency Relief Act of 1933,[7] the Administrator of the Federal Emergency Relief Administration, established thereunder, was authorized "to make grants to the several States to aid in meeting the costs of furnishing relief and work relief and in relieving the hardship and suffering caused by unemployment."

No differentiation was made in this statute between the methods of providing rural as distinguished from urban relief. The statute merely provided that the relief furnished could be "in the form of money, service, materials, and/or commodities to provide the necessities of life to persons in need as a result of the present emergency, and/or to their dependents, whether resident, transient or homeless." Federal government responsibility for relief from destitution was a new departure, and its techniques yet to be developed. It was natural enough, therefore, that the statute should be vague. Indeed, despite some judicial pronouncements to the contrary,[8] enactment of a detailed program would have been impossible.[9]

At the start, the relief program in rural areas was carried out in the same manner as urban relief, either through relief grants or through the employment of destitute farmers on miscellaneous work relief projects.[10] However, early in 1934 the relief

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vegetables, fruits and meats were canned or dried. In addition, there were stored for home consumption some 145,000 bushels of potatoes, some 13,000 bushels of other vegetables, 17,000 gallons of syrup and 250,000 pints of preserves. This accomplishment of the home management plans, and its importance in eliminating malnutrition and pellagra, would seem fully as significant as the increase in cash income provided through the farm management plans. *Cf.* note 40, *infra.* (Data furnished the writer by Philip F. Maguire, Director of Rural Rehabilitation, Farm Security Adm'n.)

[7] 48 STAT. 55 (1933), 15 U. S. C. §§721-728.

[8] In Franklin Township v. Tugwell, 85 F. (2d) 208 (App. D. C. 1936), it was held that the Emergency Relief Appropriation Act of 1935, in authorizing "housing" as one of the classes of work relief projects, was an unconstitutional delegation of legislative power to the President. "Here we have neither path nor program. Obviously, if the President were so disposed, he could use the entire sum appropriated in building houses exclusively for our colored population, or, on the other hand, he could exclude that portion of the population from any benefits whatever. Nor is any limitation on the use prescribed by the Act. The houses . . . may be constructed in cities where there is no demand, or in the country to create and build a new city in its entirety. Indeed, they may be built and left unoccupied; and, *while, as a practical matter, this may be said to be a mere fancy, the principle is none the less involved.* . . ." (Italics added.)

[9] *Cf.* Greenwood County v. Duke Power Company, 81 F. (2d) 986 (C. C. A. 4th, 1936), holding that §202 of Title II of the National Industrial Recovery Act involved no unconstitutional delegation of legislative power, since (*id.* at 994), "it was out of the question for Congress to prescribe the details of an extended program of public works." See also *In re* Community Co-op Industries, Inc., 279 Mich. 610, 273 N. W. 287 (1937) (holding notes given for a loan of funds granted to the State of Michigan under the Federal Emergency Relief Appropriation Act of 1933 were enforceable, and reversing a decision of the trial court denying recovery for lack of authority to make loans under said statute). The court said, at p. 289: "The Federal Act . . . clearly contemplated something other than a dole. In providing for work relief, relief of hardship and suffering caused by unemployment, not only by money but also by services, materials and commodities, as well as 'relief,' it carried the thought of practical aid to foster self-respecting self-support. In providing for relief of unemployed and for rehabilitation of families as well as relief of destitution, the state statute bore the same theme. Neither evidenced an intent to confine the aid strictly to alms, but by failing to prescribe a specific method of help, they conferred upon the Administrator the authority and discretion to meet the necessities by measures appropriate to them."

[10] Asch and Mangus, *Farmers on Relief and Rehabilitation,* W. P. A., DIV. OF SOCIAL RESEARCH, RESEARCH MONOGRAPH VIII (1937) 14.

administrations in the southern states began to make advances of capital goods instead of making relief grants. In April 1934, a special "Rural Rehabilitation Division" was established within the Federal Emergency Relief Administration, for the announced purpose of assisting destitute farm families throughout the country "to become self-supporting and independent of emergency relief aid."[11]

As originally projected, the new program contemplated a variety of measures in addition to rehabilitation loans.[12] However, the loan program soon became predominant. By June of 1935, 366,945 farm families had received rehabilitation advances, whereas only a fraction of that number had been taken care of through other rehabilitation measures.[13]

The State Rural Rehabilitation Corporations. In administering the rural rehabilitation program, the Federal Emergency Relief Administration utilized the state emergency relief administrations which had been established as the state agencies for administering the general relief and work relief program. Each of these state administrations was instructed to organize a "Rural Rehabilitation Division." Budgetary requests for funds were currently submitted to the Federal Emergency Relief Administrator, with a separate breakdown for the funds required for rural rehabilitation work within the state. On the basis of these requests, funds were periodically transmitted to the governors of the respective states who, in turn, transferred them to the state administrators for expenditure for rural rehabilitation purposes.[14]

In addition to establishing Rural Rehabilitation Divisions, the state relief administrations were also instructed to organize "Rural Rehabilitation Corporations" to perform the "legal and financial" functions of the rehabilitation program. Forty-nine such corporations[15] were organized in accordance with the instructions issued

[11] *Rural Rehabilitation Program,* MONTHLY REPORT F. E. R. A. (May, 1934) 6.

[12] Asch and Mangus, *supra* note 10, at 16: "This program recognized the variety of problems facing farmers who had been receiving drought or other emergency relief or whose resources were nearly exhausted. For those living on fertile land, it proposed to provide such resources as seed, livestock, equipment, buildings, building repairs, and more land if needed; to arrange debt adjustments if necessary; and to give training and advice in farm management and home economics. Displaced farmers would be relocated on the land. Farmers living on poor land would be moved to better land purchased under a land program in which the A.A.A. shared. Rural relief families living in towns having less than 5,000 inhabitants would be provided with subsistence gardens. Selected families would be transferred from the towns to subsistence farms. Families stranded by the decline of local industries would be encouraged to develop subsistence gardens and community farmsteads." Many of the projects contemplated were planned along lines similar to the subsistence Homesteads projects inaugurated under §208 of the National Industrial Recovery Act, 48 STAT. 195 (1933), 15 U. S. C. §701. For a detailed discussion of this program, see Glick, *Federal Subsistence Homesteads Program* (1935) 44 YALE L. J. 1324.

[13] Asch and Mangus, *supra* note 10, at 18.

[14] *Rural Rehabilitation Program: Financial Phases and Procedures,* F. E. R. A. Instructions F. D. 22-a (Dec. 26, 1934) 3.

[15] A total of 45 state corporations was organized, one in each of the states except Connecticut, Delaware and Rhode Island. In addition, corporations were organized for the District of Columbia, Puerto Rico, Alaska and Hawaii. Those established for the District of Columbia and the states of Maryland and Massachusetts never functioned. The Rural Rehabilitation Corporation of Puerto Rico was dissolved in September, 1935, when the rural rehabilitation program in that territory was assumed by the Puerto Rico Reconstruction Administration.

by the Rural Rehabilitation Division of the Federal Emergency Relief Administration.[16] The corporations were in most instances established without any authorization from the state legislatures.[17] A few of the corporations were formed under the laws of Delaware,[18] the remainder being chartered under the general business corporation laws of the state or territory in question. The corporations were established as non-profit organizations.[19] While nothing in the form of charter subjected the corporations to supervision or control by any agency of the state, the interest of the state was recognized upon dissolution.[20]

The powers of the corporations were extremely broad and, in addition to grants of authority to carry on the rural rehabilitation program,[21] included the usual powers with respect to the purchase and disposition of property, the making of loans, the organization of subsidiary corporations, the construction of buildings and operation of businesses, customary in the charters of business concerns. Management was vested in a board of directors, generally seven in number, who were also the stockholders. The initial incorporators usually consisted of state and federal officials connected with the administration of relief.[22]

In their functioning, the state corporations operated with varying degrees of autonomy. While observing their status as state agencies,[23] the policy of the Federal Emergency Relief Administration contemplated substantial federal supervision and control over the expenditures and activities of the corporations. As in the case of the

[16] See *Chronology of the Federal Emergency Relief Administration*, W. P. A., DIV. OF SOCIAL RESEARCH, RESEARCH MONOGRAPH VI (1937) 63, 64, 70.

[17] The corporations organized under special acts of the state legislatures were the Maryland Rehabilitation Corporation, (Laws 1935, c. 416), the New York State Rehabilitation Corporation (Laws 1935, c. 526), the California Rural Rehabilitation Corporation (Stat. & Annot. to Codes, 1935, c. 14). In addition, the corporations after their establishment were recognized as state agencies by acts of the state legislatures in South Carolina (Acts 1935, Act 340), North Dakota (Laws 1935, c. 224), North Carolina (Pub. Laws 1935, c. 314), Montana (Laws 1935, p. 537, Jt. Res. 8), Oregon (Laws 1935, c. 396), and Hawaii (Laws 1935, pp. 340-341, Jt. Res. 12). In Vermont the corporation was designated as a state agency by the governor under authority of an act of the state legislature (Laws 1935, Act 156).

[18] The Arkansas, District of Columbia and Nebraska corporations.

[19] The following charter provision of the Alabama Rural Rehabilitation Corporation is typical: "VIII. The profits of this Corporation shall never accrue to the benefit of its members, stockholders, members of Board of Directors, or officers, but shall always be used to maintain and promote the Rural Rehabilitation Program of the State of Alabama."

[20] Thus, the charter of the Colorado Rural Rehabilitation Corporation provided: *"Seventh.* The Corporation shall have a perpetual existence unless dissolved in accordance with the law, in which event its property shall be sold and disposed of, its debts paid and collected, its affairs properly settled; *and the balance of funds on hand shall become a part of the general funds of the State of Colorado, subject to appropriation by the State Legislature."* (Italics added.)

[21] "To rehabilitate individuals and families as self-sustaining human beings by enabling them to secure subsistence and gainful employment from the soil, from coordinate and affiliated industries and enterprises, and otherwise, in accordance with economic and social standards of good citizenship"; and "to engage in and assist in any kind of charitable, educational, relief and health activities whatsoever." *Ibid.*

[22] The official positions of the original directors of the Colorado Rural Rehabilitation Corporation were: Regional Representative, Federal Emergency Relief Administration; State Relief Administrator; Regional Director of the Land Policy Section of the Agricultural Adjustment Administration; Director of Rural Rehabilitation, Denver; Director of Extension Service, Colorado Agriculture College; Dean of Agriculture, Colorado Agricultural College; Member of Colorado Association State Relief. *Ibid.*

[23] See note 20, *supra*, and note 33, *infra*.

state emergency relief administrations, the Federal Administrator always had the sanction of withholding further grants to the governor of any state in which the rehabilitation corporation was departing from the basic policies prescribed.[24] In addition, the director-stockholders of each corporation were required to pledge their certificates of stock to the Federal Emergency Relief Administration as security "for the proper expenditure and administration" by the corporation of funds received "in compliance with the purposes of the grants or advancements thereof made or to be made by the Federal Emergency Relief Administrator to this corporation or to the Governor of the State."[25]

The rates of interest and the periods of amortization on rehabilitation loans differed greatly among the various corporations. Likewise, there were no standard accounting or auditing procedures. The administration of the rehabilitation program was carried out under the direction of a state director with county farm and home supervisors.

By June 1935, some 18,000 persons were employed by the state rehabilitation divisions in administering the rehabilitation program. The state corporations had total assets in excess of $80,000,000, the great bulk of which had been derived from grants made by the Federal Emergency Relief Administrator to the governors of the states. Such assets consisted, in the main, of promissory notes, chattel mortgages and conditional sales contracts received from rehabilitation borrowers, real and personal property, livestock, feed and other subsistence goods purchased for sale to rehabilitation clients, and, in some instances, substantial cash balances. In short, the corporations were going concerns of considerable size by the time the rehabilitation program was shifted to the Resettlement Administration.

The Resettlement Administration. By the Spring of 1935, the rehabilitation program, as a substitute for relief through grants and miscellaneous work projects, was sufficiently developed and recognized to be explicitly authorized by Congress in the Emergency Relief Appropriation Act of 1935.[26] Section 1 of the Act, in specifying the classes of projects for which funds could be expended by the President, included the category: "Rural rehabilitation and relief in stricken agricultural areas." The legislative history of the Act indicates clearly that this language was intended to

[24] "Through its control of funds, the Federal Emergency Relief Administration will exercise veto power over the State corporations but State responsibility and initiative will be given full play." F. E. R. A. Release No. 3430, Sept. 18, 1934, p. 9, by Lawrence Westbrook, Assistant Administrator of the Federal Emergency Relief Administration. In a few states in which the state authorities were deemed unacceptable, the relief program was administered directly by the Federal Administration. Section 3(b) of the Federal Emergency Relief Act authorized the Administrator to "assume control of the administration in any State or States where, in his judgment, more effective and efficient cooperation between the State and Federal authorities may thereby be secured in carrying out the purposes of this Act."

[25] It never became necessary to attempt to exercise rights under this pledge. While the pledge instruments were silent as to the remedies of the Federal Administrator, presumably it was intended that upon violation of its terms, he would have the right to vote the stock, with power of substitution. *Cf.* Clark v. Forster, 98 Wash. 241, 167 Pac. 908 (1917). When the Resettlement Administration assumed control over the rehabilitation program, the pledge agreements were supplemented to explicitly provide for such remedy. The normal foreclosure remedies of a pledgee would seem clearly unavailable.

[26] 49 STAT. 115 (1936), 15 U. S. C. A. §728.

embrace virtually all the activities being carried on by the state rehabilitation divisions under the old Act.[27]

The rural rehabilitation program under the new Act was placed by the President in a new agency, known as the Resettlement Administration, established by Executive Order 7027 of April 30, 1935.[28] At the time this Order was issued it was anticipated that the rural rehabilitation program, though under the direction of the Resettlement Administration, would continue to be financed by grants to the states and administered by the state rural rehabilitation corporations, in substantially the same way as had been done under the Federal Emergency Relief Act of 1933.[29] The Comptroller General, however, took the position that funds for rural rehabilitation could be expended only as a direct federal activity.[30]

[27] While the Act was under consideration by Congress, the Acting Comptroller General, in answer to the written inquiry of the Chairman of the Committee on Appropriations, advised by Decision A-6091, March 7, 1935, (which was used as the basis for discussion in the Senate considerations of the Act, see 79 CONG. REC. 3367 (1935)) that the following types of projects, listed in a memorandum submitted by the Federal Emergency Relief Administrator, could be undertaken with funds allotted for "rural rehabilitation and relief in stricken agricultural areas:"

"Furnishing subsistence goods and services (food, clothing, shelter, medical service, school supplies, etc.) to destitute families in rural areas.

"Furnishing farm equipment and supplies, mules, horses, cattle, barnyard stock, seeds, fertilizer, and other rehabilitation equipment necessary for the operation of farms in order to enable destitute families to become self-sufficient on the land.

"Acquisition of land for rehabilitation purposes.

"Supervision and advice in connection with rehabilitation of destitute families.

"Construction of . . . barns, fences, farm buildings and other improvements for these families in rural areas. . . .

"Rehabilitation or resettlement of stranded populations in rural areas.

"Direct relief to families in stricken agricultural areas.

"Furnishing of feed and seed.

". . . purchasing, processing and distribution of livestock; purchase of land necessary for the prosecution of work projects."

[28] This Order prescribed the following as the functions of the Resettlement Administration:

"(a) To administer approved projects involving [rural rehabilitation, relief in stricken agricultural areas, and] resettlement of destitute or low-income families from rural and urban areas, including the establishment, maintenance, and operation, in such connection, of communities in rural and suburban areas.

"(b) To initiate and administer a program of approved projects with respect to soil erosion, stream pollution, seacoast erosion, reforestation, forestation, and flood control [and other useful projects].

"(c) To make loans as authorized under the said Emergency Relief Appropriation Act of 1935 to finance, in whole or in part, the purchase of farm lands and necessary equipment by farmers, farm tenants, croppers, or farm laborers." (The words in brackets were not in the original Executive Order, being added by Executive Order 7200, Sept. 26, 1935).

[29] One of the eight categories of projects authorized under the Emergency Relief Appropriation Act of 1935 was: "(g) loans or grants, or both, for projects of States, Territories, Possessions, including subdivisions and agencies thereof." It was assumed that under this category, grants for carrying out rural rehabilitation projects could be made to the governors of the states for expenditure by the rural rehabilitation corporations, as state agencies.

[30] No formal decision was ever rendered on this question. A formal submission by the Administrator of the Resettlement Administration was forwarded on June 22, 1935. No written reply was ever given, but the Comptroller General informally advised the Administrator that grants to the states for rural rehabilitation would not be approved by the General Accounting Office. This position seems difficult to reconcile with views expressed by the Comptroller General, while the Emergency Relief Appropriation Act of 1935 was still before Congress, that rural electrification projects could be administered either as "purely Federal" projects under category (c) of §1 of the proposed Act, or as public projects of the state or political subdivision thereof, to be financed through loans or grants under category (g) of that section.

Transfer and Control of Rural Rehabilitation Corporations. The ruling of the Comptroller General, requiring that the new program be carried on directly by the federal government, made it necessary to establish a federal administrative organization to take the place of the rehabilitation divisions of the state emergency relief administrations. This shift from state to federal control would not have raised any particular difficulties if the state programs had involved merely direct relief. In that case, it would have been a simple matter to have the state administrations continue relief until their funds were exhausted, at which time the federal program could be placed in operation.

The actual situation was far more complicated. Projects had been started and loan commitments made to rehabilitation clients with the expectation that funds for their completion would continue to be made available through grants to the state corporations. Since the ruling of the Comptroller General prevented such further grants, it was apparent that half-completed projects would have to be abandoned, and uncompleted loan commitments to rehabilitation clients repudiated, unless some machinery was adopted to enable the Resettlement Administration to take over and continue the corporation programs.[31] In addition, the corporation programs were such as to require continued administrative supervision even in cases where funds were available for completing construction work and fulfilling rehabilitation loan commitments. Unless the Resettlement Administration could take over the program, this necessary administrative work would have had to be soon abandoned.[32]

To meet these problems, a form of resolution was submitted to the board of directors of each corporation, under which the corporation agreed to transfer its assets to the United States and, pending such transfer, authorized the Administrator of the Resettlement Administration to manage and direct the administration of its assets and the expenditure of its funds. Since the states might be regarded as possibly having a property interest in the assets of their respective corporations,[33] the

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The only limitation indicated by the Comptroller General was that, to the extent that funds for rural electrification were expended on the projects of states or political subdivisions, they would have to be charged against the total amount made available to the President for state projects under category (g) and could not be charged against the amount made available for rural electrification projects under category (c). See Decision Compt. Gen. A-6069, March 25, 1935 (unpub.).

[31] This problem was acute because the Federal Emergency Relief Administration had made funds available to the corporations by periodic grants which were often not sufficient to carry forward either the loan or the construction programs for more than a few months. Quite frequently, farm management plans had been developed for thousands of farmers, calling for total annual advances far in excess of the amounts that had currently been advanced to the corporations. Similarly, many of the corporations had initiated community projects for which the funds allotted were sufficient to carry construction for several months but not to complete the projects.

[32] As pointed out in note 40, *infra*, the furnishing of advice and supervision constituted an essential element in the rehabilitation loan program. Such advice and supervision had to be provided continuously even after the client received the full amount of his loan. Unless the completion and supervision of the loans of the corporation could be handled by the county supervisors of the Resettlement Administration, it would have been necessary to maintain duplicate administrative organizations in each state. The expense of such duplication would soon have exhausted the assets of the corporations.

[33] The Comptroller General had held that funds granted to the governors of the states under the Federal Emergency Relief Act of 1933 and administered by the state emergency relief administrations

resolutions usually provided that the transfers should not be effective until approved by the attorney general of the state concerned. For the same reason, the transfer agreements, eventually executed, provided that the funds so transferred, and their proceeds, should not be covered into miscellaneous receipts of the Treasury but should be held in a special trust fund for expenditure by the federal government for rural rehabilitation purposes only within the particular state involved, and that, in the event that the federal government should discontinue the administration of rural rehabilitation, the balances of any funds remaining in the trust accounts would either be returned to the corporation, if still in existence, or otherwise made available for expenditure by the state.

The legality of this coordinating arrangement was formally approved by the Comptroller General[84] and, with few exceptions, the resolutions were adopted by the boards of directors in the form in which they were submitted. The Resettlement Administration thereupon assumed responsibility for the administration of the corporation assets and provided the administrative personnel and funds necessary to continue the state programs without substantial interruption. In most of the states, the actual transfer of the assets of the corporations to the United States was postponed until the completion of audits. By September 30, 1937, transfer agreements had been executed by 34 of the corporations.

As was to be anticipated, the unusual character of the corporations and the rather unique relationship of the federal government to the funds acquired pursuant to the transfer agreements have raised a number of legal problems, particularly with respect to the applicability to the handling of these funds, of the rules of law govern-

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were state funds, and that federal statutes and regulations with respect to the expenditure thereof were not applicable. Decision Compt. Gen. A-56783, Jan. 2, 1935 (unpub.) See also Harris v. Fulp, 178 S. C. 332; 183 S. E. 158 (1935). A contrary view was taken in two cases. In Dyess, Administrator of Relief v. Wisemann, 189 Ark. 381, 72 S. W. (2d) 517 (1934), it was held that vehicles purchased by the Arkansas State Emergency Relief Administration were not subject to the Arkansas automobile license tax, on the ground that the funds and assets of that administration were federal property. On rehearing, the court placed its position on the broader ground that even if the assets of the local administration "technically belongs to the State," such assets were "not administered or used through any of the regular financial channels of the State Government," and being "a part of the plan and program of the Federal Emergency Relief Administration" whose "ultimate aim is to relieve from the distresses and burdens of unemployment," the funds "appropriated by the National Government for such beneficent purposes should not be diverted." (The theory of the foregoing case on rehearing seems somewhat analogous to a decision in Langer v. United States, 76 Fed. 2d 817 (C. C. A. 8th, 1935), holding that the conspiracy to divert monies expended by a state relief agency from grants received under the Federal Emergency Relief Act of 1933 was a violation of the federal conspiracy statutes, because conceding that such conspiracy would not cause pecuniary loss to the United States since the funds had become state property, there was nevertheless "an obstruction to the administration of the Federal statute.") See also State v. Martin, 134 Me. 448, 187 Atl. 710 (1936), in which a bribery conviction was reversed on the ground that the employee of the State Emergency Relief Administration was administering federal and not state funds. The court adopted the theory that the governor of Maine, in applying for and receiving funds from the Federal Emergency Relief Administration was acting "under Federal authority, solely in facilitation of, and to effectuate a Federal plan and program."

[84] Decision Compt. Gen. A-63140, July 31, 1935 (unpub.) It is difficult to see any basis for legal objection to these coordinating agreements either from the standpoint of the United States or the states. The funds in question had been granted to each state by the United States for the specific purpose of providing relief within that state. The transfer agreements were designed solely to prevent this purpose from being defeated. The interest of the state was fully protected by the provisions noted in the text.

ing the expenditure of appropriated monies.[35] However, none of these problems has proved insurmountable, and the coordination of the old and new program has in most instances been achieved with relative smoothness.

Transfer of Program to Department of Agriculture. The rehabilitation loan program, which was developed under the Emergency Relief Appropriation Acts of 1935 and 1936,[36] was administered by the Resettlement Administration, as an independent agency, until December 31, 1936. On that date, the President transferred all of the powers and functions of the Resettlement Administration and the Administrator thereof to the Secretary of Agriculture.[37] While the existing organization of the old Administration was continued without substantial change, and continued to be known as the "Resettlement Administration," its legal status was no longer that of an independent agency but rather that of a bureau within the Department of Agriculture. Additional funds for its program were made available for allotment by the President by the Emergency Relief Appropriation Act of 1937.[38] On September 1, 1937, the name of the Administration was changed to "Farm Security Administration,"[39] and under its new name charged with the additional responsibility of administering Titles I and II of the Bankhead-Jones Farm Tenant Act.

LEGAL AND ADMINISTRATIVE TECHNIQUES

The rehabilitation loan program, as at present administered by the Farm Security Administration, follows with virtually no changes the policies and procedures developed by the Resettlement Administration in the months following the enactment of the Emergency Relief Appropriation Act of 1935.

Organization. Originally, the rehabilitation loan and the rural resettlement programs of the Resettlement Administration were administered from Washington by a single division. It soon became apparent that the two programs were so different in technique that, for efficient operation, separate organizations were required. A Rural Rehabilitation Division was accordingly organized, with a small staff in Washington and in each of the twelve regional offices of the Administration. State offices, which were largely carried over from the State Emergency Relief Administrations, are also

[35] It would appear that requirements, such as competitive bidding, designed to assure efficient and honest administration, should apply in the handling of these trust funds as fully as in the handling of appropriated funds. On the other hand, regulations and procedures designed to prevent the establishment of revolving funds would seem clearly inapplicable since the transfer agreements expressly provide that the trust funds would be maintained as revolving funds and none of the proceeds covered into miscellaneous receipts.

[36] 49 STAT. 1608 (1936), 15 U. S. C. A. §728, note. The language of this Act was virtually the same as in the Emergency Relief Appropriation Act of 1935, *supra* note 26. The President was authorized to allot funds for "rural rehabilitation loans and relief to farmers and livestock growers." The only important difference was the lack of authority to purchase land. This disability, while preventing the initiation of additional resettlement projects, in no way affected the rehabilitation loan program. The appropriation contained in this Act was supplemented by the First Deficiency Appropriation Act, Fiscal Year 1937, 50 STAT. 8 (1937).

[37] Executive Order No. 7530, 2 FED. REG. 9.

[38] 50 STAT. 352, 15 U. S. C. A. §728. "This appropriation shall be available for expenditure by the Resettlement Administration for such loans, relief, and rural rehabilitation for needy persons as the President may determine, including such cost of administration as the President may direct."

[39] Secretary's Memorandum 732, 2 FED. REG. 2104.

maintained, though ultimate responsibility for the program in each region rests upon the Regional Director. While considerable supervision is exercised by the Washington, regional and state offices, particularly on questions of basic policy, the burden of administration is mainly upon the county rehabilitation supervisors and their staffs. Though loan applications and proposed farm and home management plans are passed upon in the regional office, it is the county office which is charged with the duty of preparing the plans, handling the execution of vouchers, notes and mortgages, making collections, and providing advice and supervision to borrowers in the carrying out of their farm and home plans. Expenditures for the last of the foregoing functions were for a time questioned by the Comptroller General.[40]

Individual Loans. Shortly after the enactment of the Emergency Relief Appro-

[40] The Administration Orders provided that: "Farm and home management plans will be designed so that the farm will make the largest possible contribution to the family living throughout the year in (1) vegetables and fruits, (2) dairy products, eggs and poultry, (3) meats and cereals, and (4) fuel," and "to incorporate an economy which promises sufficient cash income to provide economic stability and liquidation of obligations to the Resettlement Administration and to other creditors."

For a time the Comptroller General questioned the authority to make expenditures for advice and supervision in connection with these plans, particularly the home management plans. Decision A-66999, Nov. 9, 1935, 15 C. G. 389. In view of the legislative history of the Emergency Relief Appropriation Act of 1935, such authorization would seem clear. See note 27, *supra*. After a considerable exchange of correspondence, the Comptroller General, Decisions A-66999, A-79654, Oct. 6, 1936 (unpub.), withdrew objections to the furnishing of advice and supervision, specifically by home supervisors and home management supervisors, provided that such advice and supervision was limited to the "safeguarding of loans, or the furthering of the rehabilitation of persons to whom loans or grants have been made by the Resettlement Administration." Presumably, this restriction was intended merely to assure that advice and supervision are not given other than to destitute or low-income farm families. It would seem clear that no objection could reasonably be raised by the Comptroller General if it appeared possible to rehabilitate an applicant merely by working out farm and home management plans and providing the advice and supervision incident thereto without also providing financial assistance.

The following quotation from the letter of the Resettlement Administration to the Comptroller General constitutes a comprehensive description of the functions of the home management plans and the need for "advice and supervision:"

"The limitations of the Resettlement Administration render it impossible to make loans sufficiently large to enable families that are being rehabilitated to purchase all of the necessities of life. Loans must necessarily be kept small and careful planning is required to insure that the proceeds go as far as possible. . . . All phases of home management on the farm are so intimately related to the farming operations that they may prove the deciding factor in the failure or the success of the farming enterprise. . . . Unless the farm homemaker, therefore, does her part and assists the farmer in the production, conservation, and utilization of the farm commodities to cut down the cash cost of living, there is a real danger that an unnecessarily large portion of the cash income from the farm will be used for the support of the family instead of for the repayment of the loan. The County Home Supervisor has entire responsibility of this important phase of the program which is designed to safeguard the loan.

"After investigation, plans are worked out to insure effective and efficient expenditure of funds. The portion of the loan that is necessary to feed, clothe and house the farmer and his family is determined. In deciding on the amount of food that is necessary to feed the family, consideration is given to the number of chickens, hogs and other animals produced on the farm and available for meat, the quantity of milk produced on the farm and the portion which may be diverted from the market for use in the home, the amount of garden, truck or other commodities produced on the farm that can be utilized for home consumption.

"After rehabilitation loans are approved and the initial portion has been advanced, follow-up visits are made from time to time to determine whether or not the money advanced is being spent in accordance with the terms of the loan agreement. . . . The activities of Home Supervisors and Home Management Supervisors are definitely limited and restricted to furthering rehabilitation and to safeguarding loans as much as possible, and it is not intended that any employee delve into the personal affairs of borrowers which are unrelated to the formulation of a plan for their rehabilitation, nor will such activities be tolerated."

priation Act of 1935, general rules and regulations governing the making of loans by the Resettlement Administration were prescribed by Executive Order of the President.[41] This Order gave wide discretion to the Administrator in determining the purposes for which loans could be made.[42] The Administrator was authorized to fix interest rates at not less than three nor more than five per cent per annum.[43] Loans were required to be for such period, not to exceed forty years, as the Administrator should prescribe.[44] Loans for a period of two years or more were required to be repaid in equal annual installments except that when the loan was for a period of five years or more no principal payments need be required during the first three years.[45] To enable the completion of loan agreements executed by clients of the state corporations, the Administrator was authorized, upon receiving an assignment of such agreements from the corporations, to complete such loans according to their terms.[46] The Executive Order contained no requirements with respect to the taking of security

In accordance with this Executive Order, Administration Orders were issued by the Administrator prescribing in detail the terms and conditions for rehabilitation loans. Under these orders loans for "recoverable goods"[47] are authorized for a period

[41] Executive Order 7143, Aug. 19, 1935.

[42] *Id.* §1: "Loans may be made by the Resettlement Administration (a) for the purpose of financing, in whole or in part, the purchase of farm lands and necessary equipment by farmers, farm tenants, croppers, or farm laborers, and (b) for such other purposes as may be necessary in the administration of approved projects involving rural rehabilitation or relief in stricken agricultural areas." The reason for the differentiation between loans for the purchase of farm lands and equipment and loans for other purposes was that §1 of the Emergency Relief Appropriation Act of 1935, in addition to listing "rural rehabilitation" as one of the categories of relief and work relief, contained the following paragraph: "Funds made available by this joint resolution may be used, in the discretion of the President, for the purpose of making loans to finance, in whole or in part, the purchase of farm lands and necessary equipment by farmers, farm tenants, croppers, or farm laborers. Such loans shall be made on such terms as the President shall prescribe and shall be repaid in equal annual installments, or in such other manner as the President may determine." This last provision contained no restriction as to the income status of eligible borrowers. In administering its program, the Resettlement Administration made no loans under §1(a), except to destitute or low-income families as part of its rural rehabilitation program.

[43] *Id.* §3. "Interest shall be charged on all loans made by the Resettlement Administration at rates to be fixed by the Administrator, which rates shall not be greater than 5 percent or less than 3 percent per annum, and need not be uniform (a) throughout the United States or (b) on loans of different classes. Where circumstances so require, the Administrator may reduce the rate at which unaccrued interest shall be payable on outstanding loans, but in no case to a rate less than 3 percent per annum." Interest rates were in fact kept uniform throughout the United States. The only variation as between different classes of loans was the fixing of 3 percent on loans to cooperative associations as compared with 5 percent on individual loans.

[44] *Id.* §4. The Administrator was given wide latitude in fixing amortization periods. The following general standards were prescribed: "The period for any loan or class of loans shall be fixed by the Administrator upon the basis of (a) the use to which the proceeds thereof are to be put, (b) the financial resources and earning capacity of the borrower, and (c) in the case of loans to finance the purchase of specific property, the probable rate of depreciation, the estimated life thereof, and the amount of the loan as compared with the total purchase price."

[45] *Id.* §5.

[46] *Id.* §7. This provision was necessary because of the wide variation in the interest rates and amortization periods adopted by the State corporations.

[47] R. A. Admn. Order 41, Rev. 1, §4(c) I. Purposes of loans for "recoverable goods" include: "Purchase of horses, mules, cattle, sows, sheep, or other livestock and poultry whose useful life is expected to exceed two years; construction and major repairs of buildings and fences; purchase of farm machinery and household equipment; refinancing of chattel mortgages and other liens on personal property, when

not to exceed five years and for "non-recoverable goods"[48] for a period not to exceed two years. All loans are required to be secured.[49] Borrowers are required, at their own expense, to record or file the security instruments wherever necessary under local law to be valid as against third parties.[50] Where the proceeds of loans will not be used immediately by the borrower, interim security is obtained by requiring the deposit of the proceeds in a specified bank pursuant to a prescribed form of deposit agreement.[51]

Under the foregoing procedures, loans during the period from July 1, 1935, to April 23, 1937, were approved in an amount exceeding $125,000,000, to approximately 500,000 farm families.[52] A study of 50,000 rehabilitation loan cases disclosed an average advance of $360.00 per case, of which 52.6% went for fixed assets and 47.4% for working capital and subsistence requirements.[53]

Loans to Cooperatives. Under Executive Order 7143, the Administrator was authorized to make loans either to individuals "or to such bona fide agencies or

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it is found impossible to make other equitable adjustments and when the amount is more than should be considered an annual installment; other farm improvements essential to the successful operation of the approved farm and home management plan and the rehabilitation of the family."

[48] *Id.* §4(c) II. Purposes of loans for "non-recoverable goods" include: "Purchase of feed, seed, fertilizer, and other seasonal farm supplies; minor repairs to buildings and fences, repairs to farm machinery and household equipment, and the purchase of farm tools; payment of rent on land and buildings; payment of recording and filing fees, labor, professional and transportation services, and other fees and services, including utility services; purchase of baby chicks, feeder pigs, or other livestock of a character that will be consumed or marketed in less than two years; purchase of foods, fuel, clothing, and other subsistence goods for human needs, and payment of indispensable medical services; payment of premiums for property insurance; payment of interest on chattel mortgages or other liens on personal property; payment of annual installments on chattel mortgages or other liens against personal property; payment of taxes on real and personal property."

[49] *Id.* §4(f). The Order contemplated security not merely on the specific property purchased with the proceeds of the loan but also on all of the property of the borrowers. See note 50, *infra*.

[50] *Id.* §5. While the cost of recordation is considerable, particularly in the cotton belt, it would seem justified not merely as a security device but as a measure frequently necessary to rehabilitation. The success of a farm management plan obviously requires that the borrower be left undisturbed in the possession and use of his capital goods, and that he restrict his expenditures and obligations to those contemplated in these plans. The taking and recordation of security instruments would seem of some value as deterrents against undue extension of credit to clients by prospective creditors, and as protection against dispossession by foreclosure or execution. Of course, creditors could legally foreclose or execute upon the property subject to the lien of the government. Practically, such action would not be likely since in most instances the assets of the client would be worth less than the indebtedness to the government, particularly on liquidation valuation.

[51] The deposit agreements are executed by the designated bank, the borrower and the government, and provide that (1) the deposits are subject to withdrawal only upon the countersignature of the county supervisor or other designee of the government; (2) pending withdrawal, the borrower pledges the deposit to the government as security for the repayment of the loan; and (3) the bank waives any right of set-off. Such agreement would seem legally effective to prevent garnishment of the loan proceeds until withdrawal upon countersignature of the government representative. The propriety of this general type of deposit agreement was approved by the Comptroller General. Decision A-73755, May 19, 1936 (unpub.).

These agreements are often cumbersome in operation, and a statutory exemption of loan proceeds pending use for the purposes of the loan agreement would seem justified. *Cf.* §3 of the Act of August 12, 1935, 49 Stat. 607, 38 U. S. C. A. 450, exempting payments to disabled veterans from taxation or attachment either before or after receipt by the beneficiary. The exemption was held applicable to payments deposited in a bank subject to draft for the veteran's use, at least until expended or invested for his benefit. Lawrence v. Shaw, 300 U. S. 245 (1937).

[52] See Hearings before the Subcommittee of the House Committee on Appropriations on the Emergency Relief Appropriation Act of 1937, 75th Cong., 1st Sess. (1937) p. 11. [53] *Id.* at 13, table 3.

cooperative associations as the Administrator shall approve." To be eligible it was required that such agencies or associations "impose no inequitable restrictions upon membership or participation therein" and "that they be so conducted under the supervision of the Resettlement Administration as to protect adequately the interests of the members of participants therein." As in the case of individual loans, the Administrator was given broad authority to determine the particular objects, the only restriction being that the loans be for such purposes "as may be necessary in the administration of approved projects involving rural rehabilitation or relief in stricken agricultural areas."[54]

Besides the prohibition in Executive Order 7143 against inequitable restrictions against membership, the Administration Orders require that to be eligible for a loan the cooperative limit each member to one vote regardless of the number of shares of stock held by him, and provide against voting by proxy. Supervision by the government is generally limited to the requirement of periodic reports, responsibility for management being placed primarily upon the cooperative itself.[55]

Loans to these cooperative associations have been made for such purposes as to provide facilities for crop harvesting, processing of agricultural products, grading, packing and storing, farm machinery repairing, and facilities for food conservation and processing. The value of such facilities in the rehabilitation of the members of the cooperative is so obvious that normally no legal question has been involved in the making of these loans. However, legal questions are occasionally presented. Thus, it would seem clear that the cooperative should ordinarily consist entirely of destitute or low-income farm families and that the inclusion of other farmers must be factually justified as necessary to enable the cooperative to adequately serve the destitute and low-income members. Likewise, it would seem that, under any circumstances, a loan would not be legally authorized unless at least a majority of the members were destitute or of low income. Similarly, the amount of probable benefit to each destitute and low-income member of the cooperative must be substantial when compared with the total loan in order to justify such loan as "necessary in the administration of approved projects involving rehabilitation."

In addition to loans to cooperative associations, the Administration Orders authorize loans to individuals to enable them to participate in "community and coop-

[54] The reference to "approved projects" is somewhat unfortunate, since as a matter of grammatical construction, the Order might be construed as requiring a "project" independent of the loan itself. It is clear, however, that this was not intended. The reference to "approved projects" appears in Section 1 of the Executive Order, which is applicable to individual as well as cooperative loans, and it is clear that as to individual loans there can hardly be an approved project other than the loan itself. The General Accounting Office has in practice construed Section 1(b), both in the case of individual and cooperative loans, as not requiring any project independent of the loan itself. See Decisions Compt. Gen. A-73755, May 19, 1936 (unpub.); A-82015, 16 C. G. 613.

[55] On occasion, more direct control was deemed necessary, *e.g.*, by requiring the selection of representatives of the government as officers or directors of the cooperative. The statute, 35 STAT. 1097, 18 U. S. C. §93, which prohibits a government official to transact business with any corporation of which he is an officer, was held not applicable since the representatives so selected would have no personal interest in the profits or contracts of the cooperative. Decision Compt. Gen., A-82015, *supra* note 54; *cf.* U. S. v. Chemical Foundation, Inc., 272 U. S. 1 (1926).

erative services."[56] Under these orders, loans may be made to enable individual rehabilitation clients to purchase memberships in a cooperative where it is found that the services obtained through such membership will contribute substantially to their rehabilitation. Similarly, loans may be made to small groups of farmers to enable the joint purchase of farm equipment, bulls, stallions and jacks, and similar facilities and services, too costly to be purchased individually but not substantial enough to warrant the organization of a cooperative association eligible for a direct loan. In some regions, instead of financing these "services" through joint loans, a single loan is made to one farmer, who purchases and operates the services as his own property but undertakes by agreement to make them available to the rehabilitation families in his locality for stipulated maximum fees.

The Grant Program. The grant program of the Resettlement Administration was in the main administered as an activity separate and distinct from the rehabilitation loan program. Most of the grant recipients were families who needed temporary assistance because of drought or other disaster.[57]

It was recognized that a direct relief program was at best an unsatisfactory approach to the relief problem. Being in the nature of a "dole," direct relief grants were regarded as likely, in the long run, to demoralize the recipients. However, the practical difficulties in establishing work relief projects made it necessary to use the methods of direct relief. Consideration was given to the possibility of avoiding whatever demoralizing effects might result from dole payments by having the recipients of the grants execute "voluntary work agreements." Under this plan, farmers receiving direct relief grants would be allowed and expected—although not required—to agree to perform a stipulated amount of work on work projects if, as and when they could be instituted either locally or by the federal government. However, it was deemed undesirable to enter into such arrangements unless compensation were available for injuries sustained by farmers working on such projects, to the same extent as the compensation provided for relief workers on direct work relief projects. The Compensation Commission ruled that such compensation would not be payable,[58] so that employment under these agreements was limited to a few local projects in states in which such compensation was provided by law.[59]

THE BANKHEAD-JONES FARM TENANT ACT

Three programs are provided for in the Bankhead-Jones Farm Tenant Act. Title I of the Act provides for loans by the Secretary of Agriculture to enable

[56] R. A. Admn. Order 40, Rev. 2.

[57] From July 1, 1935, to April 23, 1937, over $42,000,000 was expended for direct relief to over 450,000 families. See Hearings, *supra* note 52, at 11.

[58] Letter of February 12, 1936, from Chairman of the United States Employees' Compensation Commission to Administrator of the Resettlement Administration. The decision was based on the argument that being "volunteers" the workers were not "employees" within the meaning of §2 of the Emergency Relief Appropriation Act of 1935 (relating to disability compensation for relief workers).

[59] In many states, regular relief workers are denied the benefits of workmen's compensation acts. See Note (1935) 96 A. L. R. 1154. Even where such benefits are ordinarily available, many state authorities held voluntary workers beyond the scope of the statute, on grounds similar to those stated in note 59, *supra*.

farmers, farm tenants, croppers and laborers to acquire farms. Title III authorizes a program for land conservation and land utilization. Title II, with which we are here concerned, provides for a program of "Rehabilitation Loans."

The administration of the rehabilitation loan program under Title II of the Bankhead-Jones Act is vested in the Secretary of Agriculture.[60] While the Act also creates a Farmers' Home Corporation, the Secretary is not required to utilize it. The statute merely authorizes him to delegate to the corporation such of his powers and duties under Titles I and II thereof as "he deems may be necessary to the efficient carrying out of the purpose of such titles."[61] It is clear, therefore, that the Secretary may administer the provisions of Titles I and II of the new Act, or any part thereof, either through the Farmers' Home Corporation or through such bureau or administration as he may utilize or create within the Department.

The essential provisions of Title II with respect to the loan program are as follows:

"Sec. 21. (a) Out of the funds made available under section 23, the Secretary shall have power to make loans to eligible individuals for the purchase of livestock, farm equipment, supplies, and for other farm needs (including minor improvements and minor repairs to real property), and for the refinancing of indebtedness, and for family subsistence.

"(b) Loans made under this section shall bear interest at a rate not in excess of 3 per centum per annum, and shall have maturities not in excess of five years, and may be renewed. Such loans shall be payable in such installments as the Secretary may provide in the loan agreement. All loans made under this title shall be secured by a chattel mortgage, a lien on crops, and an assignment of proceeds from the sale of agricultural products, or by any one or more of the foregoing.

"(c) Only farm owners, farm tenants, farm laborers, sharecroppers, and other individuals who obtain, or who recently obtained, the major portion of their income from farming operations, and who cannot obtain credit on reasonable terms from any federally incorporated lending institution, shall be eligible for loans under this section."

It would appear that the above provisions will enable the Secretary to continue the rehabilitation loan program in substantially its present form. Thus, the purposes for which loans may be made under Section 21(a) include (either by express enumeration or by the words "other farm needs") the purposes for which rehabilitation loans are now authorized under Executive Order 7143 and the Administration Orders issued thereunder.[62] Likewise, the restriction of loan maturities to five years, as provided in Section 21(b), accords with the usual amortization period now provided for rehabilitation loans.[63] Similarly, the requirement in Section 21(b) requiring that all loans be secured follows the present policy of the Farm Security Administration.[64]

In view of this similarity between the provisions of the new Act and the orders and regulations covering the present program, it would seem, at this writing, that the present administrative and legal procedures now employed can readily be adapted to the administration of Title II of the new Act.

[60] *Supra* note 1, §21.
[61] *Id.* §40(b).
[62] See notes 47, 48 and 53, *supra*.
[63] See p. 484, *supra*.
[64] See p. 485, *supra*, and notes 49, 50, *supra*.

GOVERNMENTAL FARM CREDIT AND TENANCY

WILLIAM G. MURRAY*

The battle waged by Congress against farm tenancy started years ago. In recent years it has been an uphill struggle because tenancy instead of decreasing has been steadily gaining. Far from discouraged, however, Congress has redoubled its efforts to make the typical farmer in this country an owner-operator. Of the various measures enacted to keep ownership open to tenants, those providing farm credit have been the most important.

Has governmental farm credit been used successfully in promoting ownership by farmers? To put the question in another way, would tenancy be more prevalent if the federal and state governments had kept their hands off farm credit? Let us see what kind of answer can be given to this query.

In tackling our problem, we shall break it into three stages: the first, that of governmental land credit in the period 1787-1820; the second, developments beginning about 1900, including the creation of the Federal Farm Loan System and state farm credit schemes, and the efforts of the federal government to settle farmers on reclamation projects; and finally, the last stage, now in its infancy, which begins with legislation in 1933. As we take up each of these stages the discussion will turn first to the kind of credit provided, next to the use made of the credit by farmers, and then to an appraisal of results.

GOVERNMENTAL CREDIT, FIRST STAGE, 1787-1820

Our first section, concerning the distant past, starts with the credit offered by the government in the sale of public land shortly after the Revolutionary War. At this time the sale of public land was looked upon as a source of revenue for the government. But Congress, in this early period, realized that many settlers were not able to buy land without credit. To meet this difficulty the land was sold with a down payment, the remainder to be paid later. The manner in which the terms were gradually liberalized is particularly pertinent in view of the action of Congress

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in recent years. Treat, in his book, *The National Land System, 1785-1820,* summarizes the early legislative enactments bearing on farm credit as follows:[1]

"A gradual advance toward the establishment of the credit system is noticeable. In 1785 immediate payment was insisted upon; in 1787 three months credit was allowed; in 1791 a credit of two years was suggested on large purchases; and in 1796 a year's credit was offered, and the end was not yet."

The most important piece of farm credit legislation in the early period came in 1800. In this year a bill was passed that extended the period of credit from one to four years and at the same time reduced the minimum size tract sold from 640 to 320 acres. As Treat says,

"The four year credit, denied in 1797, was now granted. All prospective land purchasers were enthusiastic over that feature. But there were men level-headed enough to prophesy the result of such an inducement to speculation or to over-extensive purchases by the actual settler."[2]

According to this new act, the purchaser paid one-fourth of the purchase price within 40 days, another one-fourth at the expiration of two years, another at the end of three years and the final payment of one-fourth at the end of four years. Interest of six per cent was charged on the balance outstanding at any time. A discount of eight per cent was allowed on all amounts paid before due. The minimum price for land was $2.00 an acre at this time, not including discounts allowed for paying cash in advance nor for any discount obtainable by using evidences of public debt in payment.

In the years that followed increasing use was made of the credit system by purchasers of land but, because of difficulties in collecting the amounts due, Congress in 1820 repealed the credit provisions. In their place, Congress stipulated cash sales only but at a lower price: $1.25 an acre in contrast to the $2 minimum with discounts which prevailed earlier. From this time onward until after 1900 the federal government was out of the farm credit business. During a major portion of this period Congress, on the other hand, was doing its best to give each settler a foothold on the land; promoting ownership either by reducing the price of land as in the Act of 1820, by granting pre-emption rights as in the Act of 1841, or finally by extending settlers the right of homestead according to the Act of 1862. In each successive enactment the farmer's path of ownership was made easier.

But how did the credit system prior to 1820 work? Very badly say the students of that period. Hibbard says:[3]

"The credit system had proved a failure. It had not been a source of great revenue for the treasury, it had not promoted the interests of the settlers, and it had not prevented speculation. It had created a large class of landholders so hopelessly in debt to the government that it took the government twelve full years to clear away the wreckage of the credit system."

[1] TREAT, THE NATIONAL LAND SYSTEM, 1785-1820 (1910) 90.
[2] *Id.* at 98.
[3] HIBBARD, A HISTORY OF THE PUBLIC LAND POLICIES (1924) 100.

According to Treat,[4]

"The result was that on January 1, 1820 the total land sales were estimated at $44,563,254, and of this sum $21,799,562 were due from the purchasers."

What amounts almost to official condemnation of the whole business was voiced years later by Donaldson, a member of the Public Land Commission, in his exhaustive treatment of public land policies and activities. He says:[5]

"The disastrous credit system spread over Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi, Louisiana, and Michigan."

During the years 1800 to 1820 many of the credit payments came due. In many instances, similar to those of recent years, payment was evidently either impossible or difficult for the purchaser because Congress was repeatedly called upon to enact relief legislation.[6] The long list of legislative enactments for the benefit of the indebted land owners has, in many respects, much in common with Congressional action during the depression years more than a century later. Between 1806 and 1820, according to Treat,[7] a total of 13 separate and distinct relief acts were passed for the benefit of those in debt to the government for the purchase of land. These acts, for the most part, were moratoria, extending the date when the land would otherwise return to the government. As stated in the act, if the purchaser did not make the final payment one year after it was due the land was to be forfeited to the government. As the end of the year of grace approached many purchasers realized that they were not going to be able to pay the amount due. To assist these purchasers in holding their farms, Congress extended the period of grace, in the majority of instances for a period of three years. Sales under the Act of 1800 did not begin until 1801. For purchasers who bought on credit in 1801 the year of grace expired in 1806. And in this same year we find that the first of the thirteen relief acts prior to 1821 was passed.

After the credit provisions were repealed in 1820, Congress was still faced with requests for relief from the purchasers who owed the government over $21,000,000. As Hibbard mentioned in the quotation given above, twelve years elapsed before Congress was able to stop legislating in behalf of this group. Eleven acts were placed on the statute books in the period 1821-1832, as listed by Treat,[8] solely for the purpose of liquidating the debt outstanding in 1820. One of the novel methods of reducing this debt was by relinquishment. For instance, a purchaser of 640 acres who paid down one-fourth of the purchase price but could not make any further payments on the remainder was allowed to keep 160 acres clear of debt by relinquishing 480 acres to the government.

[4] TREAT, *op. cit. supra* note 1, at 141-142.

[5] DONALDSON, THE PUBLIC DOMAIN (Pub. Land Comm'n, Washington, D. C., Rev. Ed. 1884) 205.

[6] *Ibid.* The author says: "Petitions, resolutions, legislative enactments, and personal applications for relief from the pressure of land purchases from the government under the credit system resulted in various acts of relief."

[7] TREAT, *op. cit. supra* note 1, at 143.

[8] *Id.* at 161.

What caused the downfall of the first important attempt of the government to extend farm credit? Of primary significance was the trend toward free land for settlers and away from land sales for revenue. One measure of this trend can be seen in the rapid reduction in the minimum size of tract sold. According to Hibbard[9]

"The minimum amount offered had dropped from the whole townships, and whole sections in alternate townships, provided by the Land Ordinance of 1785, step by step, with quarter townships and single sections in 1796, half sections, quarter sections, eighty acre tracts, and finally, in 1832, to forty acre tracts. The quarter section provision was achieved in 1804 while eighty was allowed in part in 1817 and universally in 1820."

This reduction in size coupled with the reduction in price resulted in the availability to the settler of an eighty acre farm for $100; a sum so small that credit no longer was a prominent factor. In reality, the credit system was replaced by conditions making it unnecessary.

Another circumstance which hastened the repeal of the credit provisions was the boom and depression between 1815 and 1820. The events of these years are briefly but clearly set forth by Hibbard as follows:[10]

"The sale of lands during the four years preceding 1820 increased by leaps and bounds. Debts on public land were increasing rapidly as were also the arrears which resulted in many forfeitures. During the four years from 1815 to 1818, inclusive, the amount due the government increased from $3,042,613.89 to $16,794,795.14. The panic of 1819 found the land debtors, therefore, in bad circumstances."

In the light of these conditions, the Act of April 24, 1820, reducing the price of land to $1.25 an acre minimum, reducing the minimum size tract to eighty acres, and abolishing the credit features allowed in previous acts, can be seen as a direct product of the times.

As a summary of this early venture in farm credit, the term "unsuccessful" can be properly applied. The government did not benefit as expected from revenue and the purchasers evidently did not have easy sailing in view of the numerous relief acts which were passed in their behalf. But that is not the whole story by any means. With the Louisiana Purchase in 1803 and the opening up of the territory west of the Allegheny Mountains at this time, settlers could point out that the government had so much land there was no justification for a price as high as $2.00 an acre. In fact, the availability of new land on such a large scale undermined the credit system and the efforts of the government to convert its land holdings into revenue.

In the debt relief acts of this early period there exists an object lesson which should be studied carefully by those concerned with the present day efforts of the government in making farm credit available. Farm credit and politics did not mix well at the beginning of the last century. With a large number of individual

[9] HIBBARD, *op. cit. supra* note 3, at 75. [10] *Id.* at 97.

farmers owing the government and at the same time electing their representatives to Congress, these representatives found it extremely difficult to press their constituents, the individual farm debtors, for payment.

GOVERNMENTAL CREDIT, SECOND STAGE, 1900-1932

From 1820 to the turn of the next century, the government was disposing of the public domain on terms that made farm credit unnecessary. By 1900, however, forces were at work which soon brought the question of credit into the limelight. Free land in the more productive areas was gone, prices were rising, and as a consequence, the purchase price of a farm was beginning to look formidable to the prospective buyer.

What happened at the beginning of the present century is strikingly portrayed in Table 1. In this table are value figures giving a cross-section of conditions at 10 year intervals. Practically no change occurred between 1860 and 1900 for the United States as a whole. Although the value per acre of land and buildings rose from $16.32 to $19.81, the size of farm was decreasing so that the average farm value actually decreased from $3,251 in 1860 to $2,896 in 1900. In marked contrast to the stable values prior to 1900 is the huge increase which was registered in the Census of 1910. A farm, including land and buildings, worth $2,896, jumped to $5,471. The value of land, by itself, rose in this decade from $15.57 to $32.40 an acre, or more than 100 percent. It was this phenomenal increase in values that forced the farm credit issue into the Congressional spotlight.

TABLE 1*

VALUE OF FARMS (LAND AND BUILDINGS) AND TENANT FARMERS AS PERCENT OF ALL FARMERS. FEDERAL CENSUS 1860-1935

Census Year	*Value of Farm Land and Buildings*		*Tenant Farmers as Percent of all Farmers*
	Per Acre	*Per Farm*	
1860	$16.32	$ 3,251	
1870	18.26	2,799	
1880	19.02	2,544	25.5%
1890	21.31	2,909	28.4
1900	19.81	2,896	35.3
1910	39.60	5,471	37.0
1920	69.38	10,284	38.1
1930	48.52	7,614	42.4
1935	31.16	4,823	42.1

* Compiled from tables in U. S. BUREAU OF THE CENSUS, U. S. CENSUS OF AGRICULTURE, 1935 (1937).

The increase in values was all the more significant because of the increase in tenancy which was in progress. In 1880, according to the Federal Census for that year, only 25.5% of the farms were operated by tenants, in 1890 the percentage had risen to 28.4 and by 1900, chiefly as a result of the severe depression of the nineties, 35.3% of the farms were tenanted. Although the price level was on the upgrade

during the first decade of the present century and conditions were relatively prosperous, tenancy continued to increase, the percentage in 1910 being 37. Consequently, with values going up and a larger number of farmers in the tenant class, more and more pressure was being brought to bear on provisions for farm credit. Whereas, formerly, farmers desiring ownership could turn to the free land on the frontier, now they had to finance the purchase of higher priced land or else remain in the tenant class.

The fact that land values rose from 1900 to 1910 was in itself a cause for demands for additional credit. Each purchase in 1910 took roughly twice as much credit as in 1900 if the buyer borrowed the same percentage of the purchase price. Then, too, as a psychological reason, many tenant farmers as they watched land values go up year by year, undoubtedly wished they had purchased before land went up and, rightly or wrongly, blamed the credit system for not making funds more plentiful with which to buy land.

The stage was set for agitation to obtain farm credit aid through Congress. Although a long period elapsed before the legislation was finally passed, the agitation persisted as well as the basic reason which gave rise to it.[11] In 1908 the Country Life Commission appointed by President Theodore Roosevelt reported the need for improved credit facilities. In 1912, the Southern Commercial Congress, in convention at Nashville, Tennessee, appointed a group to study farm credit abroad; this was known as the American Commission. In 1913, Congress authorized the appointment of another group, called the United States Commission, to study farm credit abroad. These two commissions, which jointly investigated European methods of extending farm credit, made their report late in 1913. From this time onward until the Federal Farm Loan Act was passed in 1916, the air was filled with speeches on farm credit and the presses were busy turning out a flood of farm credit literature.[12]

One of the outstanding characteristics of the drive for farm credit legislation was the emphasis placed on cooperative agencies. In Europe, cooperative farm credit agencies were numerous and successful. This fact became the chief topic in discussions of proposed farm credit legislation in this country. The two commissions which went to Europe had as their specific purpose a study of cooperative credit agencies of European farmers. In the Federal Farm Loan Act this cooperative idea is dominant in part but not throughout. Two compromises with the strict cooperative idea were made. In the first place, the government, in exchange for granting the tax-exemption privilege to Federal Land Bank bonds, retained powers of supervision, and, of most importance, the final say on appraisals; that is, the government through the Federal Farm Loan Board could determine the maximum amount

[11] See MORMAN, FARM CREDITS IN THE UNITED STATES AND CANADA (1924) c. 1.

[12] Among the more important books published during this period are the following: HERRICK, RURAL CREDITS (1914); MORMAN, THE PRINCIPLES OF RURAL CREDITS (1915); MORGAN, LAND CREDITS (1915). The report of the two commissions should be mentioned also; it was issued in November, 1913 as SEN. DOC. No. 214, 63rd Cong., 1st Sess.

loaned on any given piece of land. As a result, though the local national farm loan associations were cooperative institutions, they were not free to act independently. If they wished to make a loan, the maximum amount of this loan was determined by federal appraisers over which the local cooperative had no jurisdiction. The second compromise was the establishment of joint stock land banks, privately capitalized institutions, with the privilege of issuing tax-exempt bonds similar to Federal Land Banks. In reality, the Act set up a private system to compete with the cooperative banks.

The cooperative features of the Federal Farm Loan Act should be kept well in mind because they provide a marked contrast to some of the more recent legislation. Furthermore, they will probably constitute an important part of the debate in future legislation.

Three features of the Federal Farm Loan Act not mentioned thus far are the amortization plan, long term provisions, and the arrangements for securing low interest rates. These points in addition to the cooperative idea were so widely discussed at the time the subject was before Congress that they became almost the purpose of the legislation. What the farmers needed, according to the typical agricultural spokesman of the day, were lower interest rates and a longer time in which to pay the mortgages on their land. Mortgage agencies and commercial banks, lending on land security at the time, were unable or unwilling to make long term loans to farmers; instead of thirty-year loans, loans of only five years were being made. Moreover, interest rates in the south and west were admittedly high in comparison with the east and central west. The Act that was passed met these issues squarely; loans could be made for periods as long as forty years, the loans to be paid on an amortization basis, an equal amount or percentage paid on the principal each year; and finally in order to lower interest rates, the mortgages were to be pooled by each Federal Land Bank and tax-exempt bonds issued to obtain funds to lend to the farmers.

Behind the pressure in Congress for long-term, low-interest farm credit, there existed, we must not forget, the rise in land values which started roughly in 1900 and by 1910 reached the heights indicated in Table 1. Longer terms and lower interest rates were considered, and rightly so, as measures that, for the time being at least, would make it easier for farmers to finance the purchase of land or to refinance mortgages already existing. Prior to 1900, farmers expected and did often pay mortgages when they came due with proceeds from their farming operations. But when the value of land went up as it did after 1900, the three and five year mortgages were too big to be paid off when they came due. Hence, we had a basic reason for the clamor for loans with longer terms.

To go back to the Federal Farm Loan Act[18] itself, we find the purposes for which loans could be made are as follows:

[18] Act of July 17, 1916, 39 STAT. 360, 12 U. S. C. c 7.

"(a) To provide for the purchase of land for agricultural uses.
(b) To provide for the purchase of equipment, fertilizers, and livestock necessary for the proper and reasonable operation of the mortgaged farm; the term 'equipment' to be defined by the Federal Farm Loan Board.
(c) To provide buildings and for the improvement of farm lands; the term 'improvement' to be defined by the Federal Farm Loan Board.
(d) To liquidate indebtedness of the owner of the land mortgaged incurred for agricultural purposes, or incurred prior to the organization of the first farm-loan association established in and for the county in which the land is situated."

The first purpose of loans listed in the Act is for the purchase of land. This was an important reason for the establishment of farm credit facilities by the government.[14] It was hoped by those who backed this legislation that, through these new channels of credit, tenants would be able to attain ownership on more advantageous terms than formerly and that as a consequence tenants in large numbers would use the new credit facilities to become farm owners.

Those who expected the Federal Loan system to make the majority of its loans for the purchase of land were disappointed. Although the percentage devoted to this purpose in the first five years amounted to 18, this proportion has not been equalled since (see Table 2). And, unfortunately for those who bought, the 82 million loaned for land purchase in the 1917-21 period represented in many instances boom-time purchases. Of the twenty years represented in Table 2, the last

TABLE 2

LAND PURCHASE LOANS AS PERCENTAGE OF ALL LOANS MADE BY FEDERAL LAND BANKS AND LAND BANK COMMISSIONER* 1917-1936

Year	*Percent of Loan Proceeds Used to Purchase Land and Redeem from Foreclosure*	*Total Loans Made*	*Amount Used for Land Purchase*
1917-21	18.0%	$ 92,048,728**	$ 16,658,771**
1922	2.2	224,301,400	4,934,631
1923	3.8	192,083,015	7,299,155
1924	6.3	165,509,845	10,427,120
1925	9.5	127,355,451	12,098,768

* This table made up from data appearing in *Annual Reports* of the Farm Credit Administration and in the *Farm Credit Quarterly*, September 30, 1936, Table 9, p. 22. Figures for the years 1917-1932 represent all loans submitted for bond collateral; for the years 1933-1936, the figures are estimates based on loans made during a portion of each of these years, excepting 1936 for which all loans during the year were used. For the years 1933-36 loans made by the Land Bank Commissioner are included along with those of the Federal Loan Banks.

** Yearly average. Total for five year period is $460,243,641, of which $82,843,855 was used for land purchase.

[14] Holt, *The Federal Farm Loan Bureau. Its History, Activities and Organization*, INST. FOR GOVERNMENT RESEARCH, SERVICE MONOGRAPHS OF THE U. S. GOVERNMENT, No. 34 (1924). Holt says, on p. 5, "To reduce these (interest) rates and to have long-term credit facilities always available when needed by the farmers, it was generally deemed necessary to have a rural credit system established and controlled by the national government. If this were done, it was urged that not only would the agricultural community be relieved of a great burden but tenancy would also be stopped; and as a result of these improved conditions the drift of population from the country to the cities, which so alarmed some people, would be ended."

1926	11.0	131,317,715	14,444,949
1927	8.7	140,384,200	12,213,425
1928	9.9	102,236,400	10,121,404
1929	14.0	64,252,500	8,995,350
1930	12.9	47,971,000	6,188,259
1931	8.6	42,015,300	3,613,316
1932	4.6	27,569,800	1,268,211
1933	2.9	222,446,111	6,450,937
1934	2.9	1,283,503,456	37,221,600
1935	10.7	445,066,549	47,622,121
1936	14.0	186,427,995	26,099,919
Average and total	7.6	3,862,684,378	291,843,020

three, 1934-36, appear to be most satisfactory in the long battle against tenancy. In these recent years, the amounts advanced for land purchase are, in actual amount although not in percentage of amount loaned, far in excess of those of previous years. To account for the increase beginning in 1934, the passage of the Emergency Farm Mortgage Act of 1933[15] providing for the Land Bank Commissioner loans has to be considered. These new loans could be added to Federal Land Bank loans to raise the total amount of credit extended on a farm up to 75% of the value of the land and buildings. Previous to this time, Federal Land Bank loans were the only loans made and these were restricted then, and still are, to 50% of the value of the land and 20% of the value of the buildings. These new loans, consequently, have placed the federally sponsored credit agencies in a much better position to assist farmers in climbing from tenancy into ownership. And the figures show encouraging results.

STATE FARM CREDIT, 1910-1932

The same reasons back of the national drive for farm credit legislation stirred many of the state legislatures into action. Putnam in an article in 1915 has summarized the action of the states in these words,[16]

"That the American states are vigorously attacking the agricultural credit problem is evidenced by the number of rural credit measures which have been enacted into law within the last two years. No less than seven states now have comprehensive laws designed to bring about desirable reforms in the land credit system. In seven states there have been enacted laws governing the formation and management of credit unions or cooperative credit associations. The most important legislative measures, however, have been concerned with the problem of land credit reform. Massachusetts, Utah, and Wisconsin have made special provision for the establishment of competitive farm land banks under state supervision; the New York legislature has provided for the organization of the Land Bank of the State of New York, a central institution, to be owned and controlled by local savings and loan associations; while Missouri, Montana, and Oklahoma have abandoned all hope of solving the rural credit problem through private initiative and have adopted modified programs of state loans."

[15] 48 STAT. 41 (1933).

[16] Putnam, *Agricultural Credit Legislation and the Tenancy Problem* (1915) 5 AM. ECON. REV. 805. This article is an excellent statement of the background of both state and federal legislation. The author stresses the importance of rising land values as a basic reason for the agitation for farm credit reform.

But the actions of these states listed above by Putnam were merely curtain raisers compared to the farm credit legislation passed later by the states of South Dakota, North Dakota and Minnesota. Although these three were not the only ones which tackled the problem later, they went further than any other states.[17]

South Dakota passed a law setting up a Rural Credit system in 1917. According to Sparks, whose discussion of state farm mortgage ventures is the best treatment of the subject, the loans provided for by the South Dakota law were in many features similar to the loans made by the Federal Land Banks. He says:[18]

"Loans were made in sums of from $500 to $10,000 on an amortization plan running for not less than five years nor more than thirty years, with prepayment privileges after five years. . . . The rate of interest to the borrower was to be not less than one-half of 1 per cent nor more than 1½ per cent above that contracted to be paid by the State for money borrowed by it."

According to Sparks, whose information is obtained directly from the *Annual Reports of the Rural Credit Board,* the loans outstanding reached a peak in 1924, the June 30 report of that year showing total loans outstanding of $40,878,683. Troubles soon beset the South Dakota Rural Credit Board resulting in an investigation and an act of the legislature in 1925 stopping lending activities and providing for liquidation of the system.[19]

One of the best summaries of the South Dakota experience can be obtained from the balance sheet of the South Dakota Rural Credit Board for a recent year. The balance sheet for June 30, 1937 shows bonds outstanding amounting to almost 39 million dollars. As assets to use in paying these bonds the Board has 30 million dollars of real estate, slightly more than one million in loans in foreclosure and slightly less than 6 million in farm loans. In addition to these assets, miscellaneous items bring the total assets to approximately 39 million dollars. But this is not all; the State of South Dakota through tax levies has advanced the Board almost 17 million dollars plus regular appropriations of $400,000. In brief, the deficit of the Rural Credit Board from 1917 through June 30, 1937 amounted to $17,621,762.[20] In

[17] For instance, a bill was introduced in the Iowa legislature in 1915 providing for state farm mortgage banks to be capitalized at not less than $50,000; they were to be allowed to issue bonds based on farm mortgages as security. This measure was passed by the House but was turned down by the Senate. PRESTON, HISTORY OF BANKING IN IOWA (1922) 287.

[18] SPARKS, HISTORY AND THEORY OF AGRICULTURAL CREDIT IN THE UNITED STATES (1932) 212.

[19] Sparks has the following to say on the management and the investigation. "The control and management of the Department were centered in a Rural Credit Board consisting of the governor and four members appointed by him. Proper checks were not kept on the activities of this Board. It was permitted to pursue its optimistic way, with but little public attention centered upon it, until in 1922 the rumor became prevalent that the affairs of the Rural Credit system were not in good condition. Accordingly, in 1925 the legislature authorized an investigation. This investigation, covering the period from August 31, 1917, to June 30, 1926, revealed a deficit of $3,740,695.50 and the fact that over $200,000 had been embezzled by the Treasurer of the Board. ('Report of the Interim Committee to the State of South Dakota and Members and Officers of the Legislature of South Dakota,' Journal of the Senate, 20th Session, 5th Day, 1927, page 107.) In this same connection it is interesting to note that the treasurer made unauthorized deposits to the amount of $791,725.07 in banks which were later closed." SPARKS, *op. cit. supra* note 18, at 213, 214.

[20] S. D. RURAL CREDIT BOARD, 1937 ANNUAL REPORT.

the words of Sparks, "South Dakota's experience in rural credits has cost her dearly."[21]

North Dakota embarked on its adventure in farm credit in 1919. Loans in this instance were made through the Bank of North Dakota which was established by the legislature to make loans of various kinds. Farm loans could be made on an amortization basis for a period not exceeding 30 years. Interest charged at one period was 6½% with principal payments of 1½% annually.

Space will permit only a few of the details of the ups and downs of the Bank of North Dakota. After commencing business in 1919, the first period of bank operation was brought to a stormy close by the recall election of October 1921. The new administration which took over the Bank proceeded to expand the farm loan business. In 1922, a total of $3,470,691 was loaned on farm land.[22] In commenting on the farm loans made in 1922, Tostlebe gives the impression that more money might have, and should have, been loaned. He says:[23]

"It must be noted at this point that a conservative policy of bank management was certain to bring down bitter criticism on the heads of the officials, however justified such a policy might be. However, an examination of the above summary of the farm-loan department's operations for 1922 reveals an unwarranted slowness in making loans. The farmers' need for money was great. Bankruptcies and foreclosures were the order of the day. Yet in the face of this disaster only $3,470,691 were paid out in a year's time. Surely few would have the hardihood to say that this was a creditable showing!

"Why did the Bank not make more farm loans in 1922? But two explanations present themselves. One is that the farmers did not care to accept the amount which the new administration offered to loan on their land. The other is that the Bank could not, or would not, digest the loans and close them with dispatch. . . . It appears that conditions were far more favorable for the proper functioning of the farm-loan department in 1922 than ever in the history of the Bank. But the record of loans is on the whole unsatisfactory, especially in view of the urgency of the need, and the opportunities for service at hand."

In the light of the events which have taken place since the quotation above was written, the conservative policy of slowness in making loans was probably justified. Lending farmers enough money to satisfy all their creditors and thereby preventing foreclosure is a long tedious procedure unless the creditors are paid off in full. But if creditors are paid in full, the debtor is left in no better situation than before except possibly in that his interest charges may be reduced somewhat and a variety of creditors replaced by only one. This situation in North Dakota illustrates perfectly the difficulties faced by a state credit agency.

Although the farm loan record of the Bank of North Dakota has been relatively successful compared to other state systems, the depression had its inning. In judging

[21] SPARKS, *op. cit. supra* note 18, at 218.

[22] See Tostlebe, *The Bank of North Dakota: An Experiment In Agrarian Banking*, COLUMBIA UNIV. STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW, Whole No. 254 (1924). Tostlebe takes his figures from the Report of the North Dakota Industrial Commission for 1922.

[23] *Id.* at 172-173.

the North Dakota operations, it must be remembered that in addition to the ravages of the price depression, farmers in North Dakota had a succession of crop failures in the 1930's which almost wiped out what little income they would have had otherwise. Through December 31, 1935, a total of $40,505,450 in farm mortgage loans was made.[24] Of this total almost 23 million dollars was received in payments, chiefly payments resulting from the refinancing of loans with the Federal Land Bank and the Land Bank Commissioner in 1934 and 1935. Loans refinanced in this manner amounted to 18 million dollars; the loss taken by the Bank of North Dakota in the refinancing totaling $4,470,567.

At the beginning of 1936, the Bank had outstanding loans with unpaid principal amounting to $11,250,213. Real estate owned was figured at the unpaid principal of the loans made previously on this land, a total of $6,558,269. In addition, the Bank had cash on hand for the payment of outstanding bonds, a fund of $7,855,666. These are the main asset items of the farm loan department. On the liability side of the ledger, the big item was, on Dec. 31, 1935, real estate bonds amounting to $27,411,700. The total deficit on this date equalled $7,285,514. To meet this deficit the state had contributed almost 7 million dollars from tax revenue.

In 1923 Minnesota followed in the footsteps of the Dakotas by passing the "Rural Credit Act," a law closely paralleling the Federal Farm Loan Act.[25] Loans were to run for periods not exceeding forty years. The interest rate was not to exceed three-fourths of one percent above the interest rate paid by the state for funds borrowed. According to Morman[26]

". . . the Minnesota law aims to encourage the man with little capital to become a farm owner by permitting the bureau to make loans for part payment of the purchase price of improved farm land providing the vendor will take a second mortgage for the unpaid balance of the purchase price."

This is an instance of promoting ownership through farm credit facilities. Another feature of the Minnesota system making the shift from tenancy to ownership less difficult was the provision allowing loans up to 60% of the appraised value of the land plus 33⅓% of the appraised value of the improvements. In brief, Minnesota thought the Federal Farm Loan Act was too conservative. To remedy this defect they set up their own system modeled on the national one but with more liberal loan provisions.

And what has been the history of the Minnesota system? A. G. Black in 1928 wrote as follows:

"The Minnesota department also made many ill-advised loans during its early history. The present administration is conservative, however, and if current policies are continued, there seems to be slight ground for concern as to the ultimate success of the department. Earnings appear sufficient to cover any losses resulting from poor loans."[27]

[24] See N. D. INDUSTRIAL COMM'N, 1935 ANNUAL REPORT.
[25] For a brief description of the Minnesota Act, see MORMAN, *op. cit. supra* note 11, at 189-192.
[26] *Id.* at 191.
[27] Black, *The Provision for Agricultural Credit in the United States* (1928) 43 Q. J. ECON. 105.

The price decline which set in a few years after this was written put an entirely different ending to the story. We can get an accurate accounting by taking a look at the balance sheet for December 31, 1934.[28]

At the close of 1934 the bonds outstanding plus other certificates of indebtedness amounted to 66 million dollars. In assets for the retirement of this debt the Department of Rural Credit had mortgage loans totaling almost 33 million and real estate amounting to practically 25 million dollars. Other miscellaneous assets brought the total to 61 million. The deficit, taking into account other miscellaneous liabilities, was figured at $6,852,901.90 as of the close of 1934.

Most of the loans made by the Minnesota system were made in the years 1924-26. Of the 13,558 loans made between 1923 and 1933, a total of 8,415 were made in these three years. No loans were made after 1933.[29]

Deficits of seventeen, seven and six million dollars for the state credit systems of South Dakota, North Dakota and Minnesota represent, for recent years, a summary of state credit experience. Final losses, of course, will not be available until the heavy holdings of real estate are liquidated. Certain it is, however, that the experience has been costly. The conclusion, for our purposes, is simply that state credit systems are not a satisfactory method of financing farm ownership. Officials in charge of state agencies are too close to the electorate; they cannot, if they will, escape the prevailing optimistic estimation which citizens of any state place in the value of farm land in their commonwealth.

CREDIT TO SETTLERS ON IRRIGATION PROJECTS

A localized, but none the less significant, experiment in governmental farm credit is that initiated by the federal government with the passage of the Reclamation Act of 1902.[30] This act established a fund supplied by federal receipts from sale of public lands, from oil royalties and from other similar sources. With this fund the Secretary of the Interior was given the power to finance irrigation development.[31] By 1910 a total of 26 projects were in progress or completed. By 1934 the list had grown to 31 including 3 that had been abandoned. These were scattered through 15 western states.

A word or two about the cost and repayment will introduce the credit arrangements. By 1934 a total of 228 million dollars had been expended by the federal government. In 1926 Congress charged off practically 16 million, thus leaving 212 million to be repaid. Payments totaled 56 million dollars up to June 30, 1934, leaving a balance of 157 million outstanding.[32] Settlers on federal irrigation projects originally were required to pay back the cost over a ten year period without

[28] (Jan. 1935) 11 THE LIQUIDATOR (Minn. Dep't of Rural Credit) No. 1. (This issue of *The Liquidator* was entitled, "Statistical Information, Dec. 31, 1934.")

[29] *Id.* at 13.

[30] 32 STAT. 388 (1902).

[31] HAW AND SCHMITT, REPORT ON FEDERAL RECLAMATION (U. S. Dep't of the Interior, 1934) 28. This is a concise appraisal written by two experts called in to make a critical examination of federal reclamation development.

[32] *Id.* at 29.

interest. This was changed later, because of difficulties in making payments, to a 20-year payment plan. Still later, payments were scheduled in some cases on a 40-year basis.

The extent to which Congress has acted to ease the terms of payment on federal irrigation projects is readily seen in the following list of legislative enactments.[33]

1914. Reclamation Extension Act, which permitted the period of repayments to be extended to 20 years.
1921. Relief to water users on federal projects.
1922. Relief to water users on federal projects.
1923. Relief to water users on federal projects.
1924. Relief to water users on federal projects.
1926. Omnibus Adjustment Act, providing for a charge-off on 17 projects amounting to $13,708,016, and the appraisal and sale of excess land.
1931. Relief extended to Uncompahgre project, Colo.
1932. Moratorium on construction charges for 1931 and 1932.
1933. Moratorium on construction charges for 1932 and 1933.
1934. Moratorium on construction charges for 1934.

The gravity of the situation can be grasped from the following statement on repayments taken from the report referred to above.[34]

"Many of the projects here represented have been in operation for a quarter of a century, yet repayments amount to little more than 25 percent of the obligated cost, . . ."

At the root of the trouble, as brought out in the special report to the Secretary of the Interior, is the leniency of the government. Excerpts from this report, quoted below,[35] summarize in a comprehensive manner the point at issue.

"It is a pertinent fact that, though the reclamation debt is a prior lien on the land, yet in very few cases during the entire history of reclamation has the lien been enforced by legal process, despite thousands of cases of nonpayment. Further, as much as a quarter century ago the reclamation settlers learned that payment could be postponed by appeal to political methods."

"It is impossible to overlook the fact that reclamation repayment is gravely complicated by a spirit of opposition to repayment and a definite movement to bring about cancellation of the Government debt. Indications of such opposition appeared early in the history of the projects. The subsequent years of agricultural depression merely strengthened an opposition already in existence."

"Reclamation experience can leave no doubt as to the necessity of putting an end to continued efforts to postpone and escape payment of reclamation repayment, by the establishment of a clearly defined banking basis for the debt and the application of rigid banking methods for collection. Such a system would also accomplish the essential purpose of taking the subject out of politics."

These are strong words, especially when found in a report published by the government.

[33] *Id.* at 32-33. [34] *Id.* at 86. [35] *Id.* at 92-93.

The criticisms leveled at federal reclamation financing in this report might be considered too "cold-blooded," too much like a conservative banking attitude, were it not for one striking weakness in the development. This is the increase in tenancy which has taken place on the projects. In 1920 tenant farmers represented 24% of all farmers on federal reclamation projects, in 1925 the number had risen to 33%, and in 1930 the figure had increased again to 36%.[36] These figures raise an important question as to the government's ability to bring about anything approximating 100% owner-operation among farmers. With all the assistance that the government has given the farmers on the federal irrigation projects, tenancy, in 1930, was almost as high on these projects as for the country as a whole, 36% as compared to 42.4.

GOVERNMENTAL CREDIT, THIRD STAGE, 1933-

Although we are still too close to recent developments to know whether they are in truth a new and third stage, the legislation of the past five years is sufficiently different from anything in the past to warrant setting it apart. The laws which characterize this new period include two of far-reaching significance. The first is the Emergency Farm Mortgage Act of 1933,[37] providing for the Land Bank Commissioner loans. These loans either by themselves or together with the Federal Land Bank loans can, as pointed out earlier, equal 75% of the value of the land and buildings offered as security by the farmer. Moreover, these loans are not part of the Federal Land Bank or the local loan association system even though these agencies assist in the making of the loans. These loans, on the other hand, are made by the Government of the United States through the Land Bank Commissioner. Consequently, for the first time since 1820, the government is again in the farm credit field directly and on an extensive basis.

The second piece of precedent-making legislation was passed by Congress July 22, 1937. This is the Bankhead-Jones Farm Tenant Act,[38] a clear-cut program of making loans to tenants to buy farms. The loans are to be made only to tenants, and only for the purpose of buying a farm. Again, the loans are a direct advance from the government; in this instance, to be administered by the Secretary of Agriculture on recommendation of county committees. The Act is specific on the maximum amount loanable. It says:[39]

"Loans made under this title shall be in such amount (not in excess of the amount certified by the County Committee to be the value of the farm) as may be necessary to enable the borrower to acquire the farm and for necessary repairs and improvements thereon, and shall be secured by a first mortgage or deed of trust on the farm."

[36] *Id.* at 84.

[37] 48 STAT. 41 (1933).

[38] Pub. No. 210, 75th Cong. 1st. Sess. (1937) entitled "An Act to create the Farmer's Home Corporation, to promote more secure occupancy of farms and farm homes, to correct the economic instability resulting from some present forms of farm tenancy, and for other purposes."

NOTE: This Act is discussed more extensively in Maddox, *The Bankhead-Jones Farm Tenant Act, supra* p. 434. ED.

[39] Bankhead-Jones Farm Tenant Act, §3 (a).

From this it is evident that a loan up to 100% of the purchase price of the farm may be made to a tenant, a larger percentage than in any previous enactment by Congress. Other provisions of the Act include interest at 3%, a term not to exceed forty years and amortization schedules for payment of the principal. For loan funds under this Act, Congress authorized 10 million dollars for the year ending June 30, 1938, for the following year 25 million and 50 million each year thereafter. These sums should be compared with the amounts used for purchase of land through loans advanced by the Federal Land Banks and the Land Bank Commissioner as shown in Table 2. In only one year, 1935, did agencies under the Farm Credit Administration in their land purchase loans approach the 50 million dollar limit authorized for tenant purchases under the new Act.

With so much activity manifested in the plight of tenant farmers, it is worth pausing a moment to consider the changes in tenants as a percentage of all farmers in recent decades. A glance back at Table 1 will show a marked increase, 38.1% to 42.4%, between 1920 and 1930. But in 1935, strange to say, the percentage was lower than in 1930. How can we explain this situation of far reaching legislation in behalf of tenancy and at the same time a decline in tenancy? Have the Land Bank Commissioner loans authorized by the Emergency Farm Mortgage Act of 1933 been responsible? Probably not. The answer is to be found in a breakdown of the United States figures into those for smaller areas. Tenancy figures for the South, including 16 states, reveal a drop in tenancy from 55.5 to 53.5 in the five years ending in 1935. The other 32 states, in the same period, experienced an increase in tenancy from 28.5 to 30.6.[40]

As J. D. Black and R. H. Allen state in their article on the *Growth of Farm Tenancy in the United States,* the national average for 1935 is misleading.[41] As they point out, every state outside of the South, save one (New Mexico), showed an increase in tenancy between 1930 and 1935. In reality, then, the trend toward increasing tenancy is still in operation.

WHAT OF THE FUTURE?

Fortified with two separate and distinct credit systems for promoting farm ownership the federal government is now in a position to make a determined stand against the long-time trend toward tenancy. It is, of course, too soon to prophesy with much assurance the outcome of the two recent measures which have provided and liberalized governmental farm credit. Nevertheless, there are some probable developments that merit our consideration.

In the first place, there is danger of credit being extended on too generous a scale. For examples we do not have far to go; the outcome of state farm mortgage

[40] U. S. BUREAU OF THE CENSUS, U. S. CENSUS OF AGRICULTURE, 1935, pp. 104-107.

[41] (May, 1937) 51 Q. J. ECON. 393, especially 416-417. The reader is also referred to the extensive report, FARM TENANCY, REPORT OF THE PRESIDENT'S COMMITTEE (Nat. Resources Committee, 1937). See particularly the sections on growth of tenancy and land-purchase programs of Ireland and Denmark (pp. 75-79).

systems in South and North Dakota and in Minnesota indicate the heavy losses that may be experienced. Of course, it can be argued, that the losses of the state systems, and, to this should be added the difficulties of the Federal Land Banks,[42] were due mainly to the severe depression. Even if this is admitted, the question still remains why the state systems had such terrific losses; in many cases, the losses occurring before the price decline of 1931 had begun. Unfortunately, there is slight chance of escape from optimism in the administration of state farm credit. Whereas private credit agencies are inclined to be conservative in advancing funds, the state agencies have a tendency to liberalize rather than the reverse because otherwise they would be found guilty of lacking faith in the future of their own commonwealth. And what state is there that does not vision a rosier picture of its agricultural future than outsiders can see? The danger, then, is too much optimism. We have observed how the states lost out because of it. What will happen to the federal government? Will it succumb to the same temptation? It has, to a limited extent, as we have seen in the record of the federal irrigation projects.

In comparison with the states the federal government is in a better position to extend loans on farm land. The government at Washington, D. C. can be more "hard-boiled" and conservative because it is farther away from the local "hot spot." It can resist the pressure of some locality wanting to boost its land values whereas a state agency might not be as successful. But whether the federal government in the new loans under the Farm Tenant Act can throw up adequate safeguards around advances up to 100% of the purchase price of the land is a question time alone can tell.

Secondly, politics and farm credit do not mix well. Farm credit relief measures are a sure hit with Congressmen. One of the lessons to be learned from the government's credit system from 1800 to 1820 was the hearty appetite Congress had for legislation relieving the debt situation among farmers. A review of state and national legislative activities in the last five years furnishes another convincing illustration of this same tendency. In all frankness, therefore, it appears that legislatures, both state and national, will treat farm credit more in a political than in a strict financial manner. A contrast is the Federal Reserve System set up by Congress in 1913. Although politics in a degree may have entered into the establishment and administration of this body, it has been unusually free from subsidies of the kind Congress has linked with the Farm Credit Administration. Although an important function of the Federal Reserve Banks is lending to member banks, there is little evidence of the Reserve Banks having mixed too much optimism with such loans; in fact, the Banks have been accused of the reverse, of being too conservative. There is, as can be seen readily, a good reason for farm credit being good politics as compared with the Federal Reserve Banks; it is simply that farm credit affects many voters and affects them directly.

[42] Congress came to the rescue of the Federal Land Banks in January, 1932 with an act which added 125 million dollars to their capital.

Finally, what of the prospects of governmental farm credit reducing tenancy? At the present, they do not look particularly bright. If we assume 100 million dollars is loaned annually, a liberal estimate, one-half by the Farm Credit Administration through the Federal Land Banks and the Land Bank Commissioner, and the other half by the Secretary of Agriculture as authorized by the Farm Tenant Act, even this amount will not have much effect. How small this sum is in comparison to the job to be done can be visualized by reference to the value of tenant-operated land in 1935, as stated in the Federal Census, $10,952,747,497. In 1930, the figure was over 16 billion dollars. Although 100 million dollars would speed the attainment of ownership for a small group of tenants, it should not be overlooked that this sum is equal to approximately only one percent of the value of land and buildings on tenant-operated farms. Of course, since many tenants are not in a position to tackle ownership or do not desire it, governmental credit may supply all the credit really needed for this purpose. Maybe, after all, we should consider at least one-third of the farms in the tenant status as a normal condition. Looked at from this viewpoint, governmental farm credit, even though it does not reduce tenancy, can be considered successful if it prevents a continuation of the trend toward tenancy.

What of the prospects for payments under the 1933 and 1937 legislation? One factor has favored the government in the Land Bank Commissioner loans since 1933; they were made on a comparatively low price level, comparatively low for example in terms of the 1926 level. Consequently the loans, although representing amounts up to 75% of the value of the property, are in absolute amounts not much larger, if any, than the 50% loans of 10 years ago. As the sale value of land rises, however, excessive loans may occur unless appraisals are kept down. The main objective becomes, then, one of keeping governmental agencies from following rising sale values in their land appraisals.

Difficulties introduced by rising land values suggest the central difficulty in farm credit, fluctuations in the price level. If the price level could be stabilized widespread distress, similar to that in the period 1931-1935, could be largely avoided. Without such stability a large element of uncertainty is going to exist concerning the success of governmental agencies in assisting tenants into ownership. For without price stability, those tenants who attempt ownership on anything approaching a 100% credit basis will be in financial hot water if, soon after they buy, the price level takes a sizeable dip. Congress will, undoubtedly, come to the rescue of these farmers. But even so, it will only provide, in all probability, an opportunity for these farmers to continue carrying a heavy debt burden on somewhat easier terms. If prices, therefore, are to be allowed to fluctuate widely, the future of governmental farm credit will contain many headaches for farmers as well as for credit officials.

Since it is by no means certain that the price level can be satisfactorily corralled and controlled, perhaps we should cast in some other direction to improve the tenant's status. One solution is to make tenancy more attractive; another, to have the government buy land and rent it to farmers on long term leases. Still another is to

adjust the financing of land to the fluctuations of the price level. This last suggestion, probably, would be the most desirable, but unfortunately it cannot be accomplished without overcoming a number of obstacles.

In adjusting the farmer's debt load to the price level, the chief obstacle is finding a simple method of handling the payments. In the western wheat country, particularly in the prairie provinces of Canada, farmers have purchased land in numerous instances with an agreement to pay a specified portion of the crop to the seller until the principal amount and interest are paid. Suggestions of this type have been made and studied in this country. Johnson at Missouri recently published a bulletin describing a method which he recommends to the farm purchaser as a means of avoiding the risks of changing prices.[43] An even more radical departure, including payments that would be adjusted to weather variations as well as price variations, is a possibility. The payments, under such a scheme, would be similar to crop share rent payments, with the exception that they would represent a larger portion of the crop and would run for a definite period of years after which the farm would belong to the buyer.

A milestone along the road to needed adjustments was passed when the Farm Credit Act of 1937[44] became a law. One of the provisions in this Act makes it possible for borrowers from the Federal Land Banks and the Land Bank Commissioner to make interest payments in advance. Advances of this kind, instead of applying on principal as formerly, can now be used to build up a reserve fund. This reserve, in turn, will be available to the borrower to use in paying his interest if prices drop or crops fail. Since interest will be paid on advances in the reserve fund, farmers will not be losing by having advances applied in this way rather than on principal.

If governmental credit is to succeed over the long pull either some development of variable payments or stabilization of the price level is essential. Otherwise, the logical answer is withdrawal of governmental credit where it represents an advance of, say, more than 75% of the farm valuation. In place of this credit, Congress might plan a program to make tenancy more attractive. In the last analysis, if we are to have violent fluctuations of prosperity and depression many tenants would be better off to remain in their present status.

At the beginning of this discussion a question was raised as to the effectiveness of governmental credit in counteracting tenancy. The answer is clear. Up to this time, experience has shown that credit extended by governmental agencies, state and federal, has not been successful in keeping tenancy down. The program now underway, however, is more ambitious than any previous plan. Success in this new credit program is threatened by possible fluctuations in the price level. An attempt should be made either to control or to adjust for these fluctuations else our farm debt difficulties in some future depression may make those of the recent depression seem insignificant.

[43] Johnson, *Acquiring Farm Ownership by Payments in Kind, A Plan to Permit Tenants to Buy Farms Through Annual Product Payments*, MO. AGRIC. EXPER. STA., BULL. 378 (January 1937).

[44] Pub. No. 323, 75th Cong., 1st Sess. (1937).

REGULATIONS OF FARM LANDLORD-TENANT RELATIONSHIPS

ALBERT H. COTTON*

The most obvious solution for the problems of the farm tenant is to enable the tenant to become an owner. In America, indeed, this has generally been assumed to be the only solution. In the early days it was believed that the tenant would save his money and eventually purchase a farm.[1] Since it has been found that the optimism which assumed that this was a natural process was unjustified, a demand has arisen for assistance by the government to aid the tenant in attaining ownership. Beginning with the Homestead Act,[2] where land was given to settlers, through the period where easier credit through such agencies as the Farm Credit Administration[3] was regarded as the solution of the problem, government assistance in some form has been available to those who desired to own farms, but the American ideal of the owner-operated farm has been accompanied by the fact of a steady increase in the number of farms operated by tenants.[4]

The most recent study of the farm tenancy problem, the *Report of the President's Committee on Farm Tenancy,* recommended a double approach to the problem through more liberal federal aid to tenants to become owners and through state action to improve the condition of those who remained tenants by regulation of their relationships with their landlords.[5] The first line of approach has already been adopted with the passage of the Bankhead-Jones Farm Tenant Act[6] and the establishment of the Farm Security Administration. The second line of approach has been largely overlooked. It is only with this second approach to the problem that this paper is concerned.

With regard to the number of farmers who may be immediately affected, it may well be that a regulatory program is of greater immediate importance than a farm purchase program. The funds available do not permit any immediate prospect of a

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[1] THE FUTURE OF THE GREAT PLAINS, REPORT OF THE GREAT PLAINS COMMITTEE (1936), 66.

[2] Homestead Act of May 20, 1862, as amended, 43 U. S. C., §§161-302.

[3] Act of July 17, 1916, 39 STAT. 360, as amended, 12 U. S. C., §§636-1148a.

[4] FARM TENANCY, REPORT OF THE PRESIDENT'S COMMITTEE (Nat. Resources Comm. 1937) Table V, Percentage of Farm Tenants, by States, 1880 to 1935, p. 96. (Hereinafter cited as "FARM TENANCY REPORT.")

[5] FARM TENANCY REPORT, 11-20.

[6] Pub. No. 210, 75th Cong., 1st Sess. (1937).

great reduction in the total number of tenants through the activities of the Farm Security Administration[7] and those of the Farm Credit Administration affect only the upper class of tenants, since the purchaser must have a 25% equity to be eligible for a Farm Credit loan.[8] In addition, it may well be that many tenants would prefer to remain as tenants, untroubled by the responsibilities of farm ownership, and that the number of contented farm tenants will increase if the system of tenancy is improved. Consequently, the hitherto overlooked possibilities of improving the situation of those who remain tenants are of greatest importance as a supplement to a farm ownership program.

An altruistic desire to help farm tenants, commendable as it is, is not a sufficient basis upon which to defend the constitutionality of a program for the improvement of tenancy conditions which may cut down the existing rights of landlords. But the problem affects greater interests than those of the unfortunate tenant or the property rights of his landlord. The instability of farm tenure has resulted in the deterioration of tenant-operated farms with consequent serious losses in the fertility of the soil, a basic natural resource. In addition, there are serious economic losses involved in the frequent moving of tenants and undesirable results in rural social life. The material gathered by the President's Committee on Farm Tenancy indicates clearly that the problem is one which justifies federal action and expenditures under the general welfare clause and also that the problem is one which justifies state action under the police power.[9] It remains merely to show that various detailed reforms have a reasonable relation to the problems which they are designed to meet, to bring the subject of farm tenancy regulation within the general welfare phase of the police power.[10]

The regulatory program with which this paper is concerned is properly one for state rather than federal action. Not only is it true that the regulation of landlord-tenant relationships is generally regarded as one of the powers which has been reserved to the states, but conditions vary so greatly between states that legislation which would be suitable in one state, and arouse little opposition there, might be unsuitable or very unpopular in another. Relying upon state action has the disadvantage that progress will be made unevenly, but it has the corresponding advantage, important in connection with a new program, that other states may benefit from the experiences of the experimenting states.

[7] The appropriation at present available to the Farm Security Administration is $10,000,000 for the fiscal year ending June 30, 1938, Pub. No. 210, *supra* note 6, §6. There are 2,865,155 tenants in the country, FARM TENANCY REPORT, Table I, p. 89.

[8] Emergency Farm Mortgage Act, May 12, 1933, 48 STAT. 41, 12 U. S. C. §636. These loans have been used primarily to refinance existing indebtedness, thus preventing additional owners from joining the ranks of tenants. *The Farm Real Estate Situation 1933-34*, U. S. DEPT. OF AGRI., CIRC. No. 354 (April 1935) 5.

[9] FARM TENANCY REPORT, 6-7, 54-60.

[10] Thus, the United States Supreme Court, while holding the first Frazier-Lemke Act (Act of June 28, 1934, 48 STAT. 1289) unconstitutional, recognized specifically that the problem of checking the growth of farm tenancy was a proper one for Congressional consideration and action. Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 600 (1935).

EXISTING LANDLORD-TENANT LEGISLATION

With exceptions which will be considered later, existing landlord-tenant legislation is not concerned with the improvement of landlord-tenant relationships nor with protecting the interests of the tenants. Except in the South, where it was necessary to develop a new system of agricultural relationships to replace slavery,[11] there is, indeed, little landlord-tenant law which applies peculiarly to agricultural conditions. In general, the landlord-tenant law of the northern and western states is concerned with codification or modification of the common law and with establishing methods whereby the landlord may collect his rent.

The state with the greatest percentage of farm tenancy outside the southern states is Iowa.[12] Yet Iowa has only two statutes which relate solely to farm tenancy. The first establishes the landlord's lien against crops and provides a method for enforcing it.[13] The second provides that agricultural leases must fix the termination of the tenancy on March 1, except in the case of croppers, whose leases expire when the crop is harvested.[14] Except as covered by these two statutes, all questions which arise between landlord and tenant must be settled by reference to general statutes applicable to both urban and rural conditions or to common-law principles.

Outside the South two of the most serious regional tenancy problems exist in the Corn Belt and Great Plains states.[15] In these states there has been a little legislation relating to tenancy in Kansas, Texas, North Dakota, and Oklahoma, which shows a beginning of a realization that tenancy presents problems which require legislation for the protection of tenants. Codifications of the common law of real property, largely adapted from the California code provisions,[16] have been enacted in Montana,[17] North Dakota,[18] South Dakota,[19] and Oklahoma.[20] All of the states have Statute of Frauds provisions requiring leases for a period of more than one year to be in writing and all make provisions for the enforcement against crops of a landlord's lien.[21] There is legislation concerning the responsibility of fencing, placing it variously upon the occupant or upon the landowner.[22] In Nebraska, where the put-

[11] FARM TENANCY REPORT, 41-43.

[12] *Id.* at 96-97.

[13] IOWA CODE (1935) §§10261-10269.

[14] *Id.* §10160.

[15] FARM TENANCY REPORT, 96-97.

[16] CAL. CIVIL CODE (Deering 1933) §654 *et seq.* The California provisions, in turn, were adopted from New York, 49 N. Y. CONS. LAWS ANN. (McKinney 1937) §1 *et seq.*

[17] MONT. REV. CODE (1935) §6663 *et seq.*

[18] N. D. COMP. LAWS (1913) §5254 *et seq.*

[19] S. D. COMP. LAWS (1929) §264 *et seq.*

[20] OKLA. STAT. ANN. (1921) §8391 *et seq.*

[21] Statute of Frauds provisions are derived from the English Statute of Frauds, 29 CAR. II, c. 3 (1676). The prevalence and effect of landlord's lien statutes are discussed in 2 TIFFANY, LANDLORD AND TENANT (1910) §32 *et seq.*

[22] At common law there was no obligation to fence on either landlords or tenants, but every man was bound at his peril to keep his cattle on his own premises. Miller v. Parvin, 111 Kans. 444, 207 Pac. 826 (1922). Some states have held that this rule was inapplicable to conditions in this country and as a result, landowners or tenants must maintain fences to keep the animals of others out. Johnson v. Ore. Short Line R. Co., 7 Idaho 355, 63 Pac. 112 (1900), Moses v. Southern Pac. R. Co., 18 Ore. 385, 23 Pac. 498 (1890). By statute, however, the common law rule has been restored in some states. State v. Mathis, 149 N. C. 546, 63 S. E. 99 (1908). Statutes now quite generally regulate the subject of fencing, and their constitutionality has been upheld under the police power, both where the object of the statute is to regulate animals running at large, Dillard v. Webb, 55 Ala. 468 (1876), and where it is to divide the

ting out of poison to control insect crop pests is required by statute in districts established for that purpose, the law requires that it be purchased by the landlord and that the expense of putting it out shall be borne by the tenant.[23] Texas has an extensive system of landlord-tenant law,[24] which shows both similarities to the law of the other southern states, and also an effort at reform which will be considered in detail.

This lack of legislation, in general, appears to be caused by lack of interest in the problem. Illinois is, apparently, the only state where there has been a nearly successful attempt to secure legislation of benefit to tenants, which has attracted considerable attention. There, after the appointment of a commission in 1920, a bill passed one house of the legislature providing for compensation to tenants for improvements made on farms, the value of which had not been exhausted at the time the tenant moved.[25] In the South there is much legislation governing both landlord and tenant and landlord and cropper relations, but it can scarcely be said to be motivated by any desire to protect the interests of the tenants or to reduce tenancy and sharecropping. Rather, it arose after the Civil War and the abolition of slavery and was motivated by a desire to get land back into production and to secure for the landowners a return on their property.[26] Thus it appears that, with the exceptions to be noted, the American states have been content to allow landlord-tenant relationships to go unregulated except through such statutes as have been deemed necessary

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burden of maintaining partition fences. Zarbaugh v. Ellinger, 99 Ohio. St. 133, 124 N. E. 68, 6 A. L. R. 208 (1918). Generally, the statutes designed to regulate the running of stock are local in operation, State v. Mathis, *supra*, and are adopted after local option elections or the filing of a petition. *Cf.* TEX. CONST., Art. 16, §§22 and 23, requiring a referendum of freeholders on adoption of herd law. In some instances, taxes or assessments are levied to erect a fence around the district, thus placing the burden on the landowners. Stiewell v. Fencing Dist., 71 Ark. 17, 70 S. W. 308 (1902). While these statutes generally use the word "owner," it has been construed to include tenants in some instances. Peterson v. Johnson, 132 Wis. 280, 111 N. W. 659 (1907), and Robinson v. Schiltz, 135 Mo. App. 32 115 S. W. 472 (1909). Where the burden of fencing is upon the owner of live stock, rather than the owner of land, tenants who own stock are, of course, included. Some statutes define occupant or owner for the purpose of the statute as including tenants, as in Wyoming, WYO. REV. STAT. (1931) §42-102. In Montana the burden of fencing is placed upon the occupant, MONT. REV. CODE (1935) §§6777-6782, where the provisions of CAL. CIVIL CODE (Deering 1933) §841, were adopted with the substitution of "occupant" for "owner," but the duty of repairing barbed wire fences is placed upon the owner, MONT. REV. CODE (1935) §3376. Delaware permits the tenant to deduct the cost of division fencing from his rent when he is required to erect it by fence viewers, DEL. CODE (1935) §4178.

[23] NEB. COMP. STAT. (1929) §2-1306. The act for the extermination of fruit pests upheld in Balch v. Glenn, 85 Kans. 735, 119 Pac. 67 (1911) provided that notice of necessary work to control the pests should be given to the tenant, but made the cost of doing it by state officials, if the tenant failed to do so, a charge against the owner to be collected as real property taxes are collected. Similar statutes relating to pests, both animal and insect, and making the cost of their extermination a lien against the landlord's property where the tenant or landlord failed to control them, have been upheld in California. Los Angeles County v. Spencer, 126 Cal. 670, 59 Pac. 202, 385 (1899). In Washington a statute placing the entire burden of animal pest eradication through levying an acreage or *ad valorem* tax against the landowners, has been upheld. State *ex rel.* Stanger v. Bartlett, 112 Wash. 299, 192 Pac. 945 (1920).

[24] TEX. STAT. (Vernon, 1936) art. 5222 *et seq.*

[25] Harris, *Compensation as a Means of Improving the Farm Tenancy System*, RESETTLEMENT ADM'N, LAND USE PLANNING PUBL. No. 14 (1937), 32-33.

[26] The southern law with regard to landlord-tenant relationship is discussed in Book, *A Note on the Legal Status of Tenants and Sharecroppers in the South, infra*, p. 539.

to insure the collection of rent, through codification of the common law, or through statutes generally applicable to both urban and rural conditions.

LEGISLATION FAVORABLE TO TENANTS

In only four states has there been legislation dealing with landlord-tenant relationships which shows a clear intention of protecting the interests of the tenants, aside from statutes affecting the right of the tenant to remove fixtures and statutes affecting the tenant's duty to repair the premises, both of which are to be considered hereafter. In North Carolina a limitation has been placed upon the advance over the retail cash price which may be charged where the landlord or merchant furnishes supplies to the tenant[27] and, in addition, a commission was created at the last session of the legislature to study landlord-tenant problems.[28] Legislation in Texas, Kansas, and Oklahoma will be considered in succeeding sections.

In connection with our discussion of this American legislation, the British landlord-tenant legislation will also be analyzed, since it has been the inspiration for some of the suggestions for the improvement of American landlord-tenant relationships and since the English common-law system is essentially similar to that in this country.

1. *The Texas Legislation*

The Texas legislature, in 1915, enacted a statute[29] setting maximum rentals of one-third the value of the grain and one-fourth the value of the cotton where the land was cultivated by a tenant who furnished everything except the land, and maximum rentals of one-half the value of the grain and one-half the value of the cotton where the landlord furnished everything except the labor. The statute provided that leases reserving rent exceeding those amounts should be unenforceable, that there should be no landlord's lien for rent, and that if a landlord sought to collect more than the maximum rentals, the tenant could recover double the full amount of such rental.

This statute was held unconstitutional by the Texas Supreme Court in the case of *Culberson v. Ashford*.[30] The court held that the statute violated the due process clauses of both the state constitution and of the Fourteenth Amendment to the Federal Constitution. It denied that the agricultural industry was so affected with a public interest as to justify price fixing and relied upon such cases as *Williams v. Standard Oil Co.*[31] and *Tyson & Bro. v. Banton*,[32] both holding unconstitutional price-fixing legislation in businesses not so affected. The case of *Block v. Hirsh*,[33]

[27] N. C. CODE (Michie, 1935) §2482. This legislation, which also applies to croppers, is considered in Book, *supra* note 26, p. 539.

[28] N. C. Pub. Laws, 1937, Res. No. 35, p. 940. The purpose of this statute, however, is to facilitate state cooperation with the Farm Security Administration, rather than to inaugurate a reform of the existing tenancy and sharecropping systems through state action.

[29] Tex. Acts 1915, p. 77.

[30] 118 Tex. 491, 18 S. W. (2d) 585 (1929).

[31] 278 U. S. 235 (1929).

[32] 273 U. S. 418 (1926).

[33] 256 U. S. 135 (1921).

was distinguished on the ground that the legislation there upheld, limiting rentals for urban property, depended for its validity upon the war emergency. Other courts may follow the reasoning and decision of the Texas court since the problem of farm tenancy has not arisen as a sudden emergency. In any event, there has been no attempt to regulate agricultural rentals since that decision.

Following the decision in the *Culberson* case however, the Texas legislature re-enacted the rent-limitation statute, eliminating the provisions directly limiting rentals and authorizing double damages but providing that there should be no landlord's lien, either for rent or for supplies furnished, where the rental exceeded the shares named in the previous statute.[34] While this statute has not been subjected to constitutional attack, there is every reason to assume that it is valid. Dicta in a series of cases before the Texas Court of Civil Appeals indicate that the legislature has power under the Texas constitution to abolish the landlord's lien, or to restrict it in any way in which it deems best for the public interest.[35]

The value of legislation merely restricting the landlord's lien depends upon many factors which vary greatly. The widespread existence of landlord's lien statutes, covering both rent and supplies in the South, indicates that in the southern states, at least, landlords may rely largely upon their liens to make collections. The North Carolina experience with lien limitation indicates, however, that where a considerable reform is attempted through this device, most landlords will rely upon other methods of collection rather than submit to the loss of profits which acceptance of the restriction would entail.[36] It may well be that a lien limitation is of value only in preventing undesirable departures from existing practice and is of little value in encouraging new practices. The rentals specified in the Texas statutes are those prevailing generally in the cotton-growing states. Where tenants are more prosperous, the landlord does not need the aid of a lien. Thus the effectiveness of the statute depends entirely upon whether the landlord, at the time of contracting, feels that he may have to resort to his lien in order to insure collection.[37]

It should be noted that the maximum rental provisions, in their present and ap-

[34] TEX. STAT. (Vernon, 1936) art. 5222, Tex. Acts 1931, c. 100, §1, p. 171.

[35] Dunbar v. Texas Irrigation Co., 195 S. W. 614 (Tex. Civ. App. 1917); Hawthorn v. Coates Bros., 202 S. W. 804 (Tex. Civ. App. 1918); Rumbo v. Winterrowd, 228 S. W. 258 (Tex. Civ. App. 1921); Miller v. Branch, 233 S. W. 1032 (Tex. Civ. App. 1921). The last case differentiates between the power to fix maximum rentals and to limit liens, basing the latter on the right of the legislature to classify landlords and to exclude certain landlords from the benefit of the lien.

[36] Despite the fact that the North Carolina statute limits the lien for supplies to cases where only a 10% advance is charged, merchants and landlords generally charge a 25% advance. Wickens and Forster, *Farm Credit in North Carolina—its Cost, Risk and Management*, N. C. AGRI. EXPT. STAT. BULL. 270 (1930) 44; Wooten, *Credit Problems of North Carolina Cropper Farmers*, N. C. AGRI. EXPT. STA. BULL. 271 (1930), 13-18.

[37] Another defect of the statute, as was pointed out by the Texas Court of Civil Appeals in Rumbo v. Winterrowd and Miller v. Branch, both *supra* note 35, is that under such limitations the landlord is given no opportunity to charge a higher rental where he furnishes a superior type of farm-dwelling. The validity of this objection, in practice, is also hard to estimate. In many areas there are no farm-dwellings so superior as to justify rentals higher than the statutory maxima and in most cases the presence of a superior dwelling will attract tenants, so that the landlord who supplies such a dwelling may be amply compensated by the fact that he has the choice of the best tenants.

parently only constitutional form, afford no protection whatever to the sharecropper. Under Texas law, where the relationship of landlord and cropper, rather than landlord and tenant, exists, the two are tenants in common of the crop.[38] Consequently, the landlord has no need of a lien. Thus, under the Texas law, a landlord who desires to secure a greater rental than the statute permits needs merely to make a cropping agreement instead of a lease and thus hold title to the crop, rather than a lien upon it, as security for his rent.

2. *The Kansas Legislation*

Kansas has enacted two statutes for the benefit of tenants, both of which apply only to owners of more than 5,000 acres whose policies, different from those of most American landlords, are regarded as more objectionable. Under this system the landlord owns only the land and the tenant is forced to erect all improvements, including expensive permanent buildings, without any provision for compensation if he is given notice to move at the end of an annual tenancy. The first of these statutes[39] provides that these landlords must make provision in their leases for the free sale of buildings and improvements by the tenant or their purchase by the landlord, without requiring the tenant to remove them. The second section of the act provides that where the tenant owned substantially all of the buildings and improvements, he could transfer them without the consent of the landlord, and that any provision in a lease prohibiting such a transfer or requiring removal which did not require the owner or the new tenant to pay the fair value of the improvement to the tenant, should be void.

The constitutionality of this regulation has never been attacked, and it was impliedly approved in the case of *Berg v. Scully*,[40] which arose before its passage but was decided afterwards. In this case, where a tenant of the Scully Estate contended that a provision for compensation for the improvements erected by him was an implied term of his contract at common law because of the estate's business practice of requiring tenants to make improvements, the court upheld the tenant's contentions and remarked that the statute expressed the public policy of the state.

The second Kansas statute[41] first recites a number of burdensome requirements in leases used by persons and corporations whose sole business is the leasing of farm lands for money rent, and then provides that leases containing all the requirements recited are void and that tenants under them are to be required to pay only a fair rental. Further provisions limit the landlord's lien to the crops actually grown on the land, to the livestock raised on the land, and to the sums received by the tenants for pasturage. While the statute is easy to evade since it would not be operative if

[38] It has been held that the landlord's lien statute does not apply to a cropping contract, Brown v. Johnson, 118 Tex. 143, 12 S. W. (2d) 543 (1920); Rosser v. Cole, 226 S. W. 510 (Tex. Civ. App. 1920), and that landlord and cropper are tenants in common as to the crop. Horseley v. Moss & Pennington, 5 Tex. Civ. App. 341 (1893); Tignor v. Toney, 13 Tex. Civ. App. 518, 35 S. W. 881 (1896).

[39] KANS. GEN. STAT. (1935) §§67-501, 67-501a.

[40] 120 Kans. 637, 245 Pac. 119 (1926).

[41] KANS. GEN. STAT. (1935) §§67-531—67-533.

a single provision recited in the statute were omitted from the lease and is also so vague that it might well be held inoperative for that reason, nevertheless, it is interesting as a recital of the grievances of the cash tenants of the Middle West. The statute first recites that the cash rental reserved is itself equal to the fair and reasonable value of the lands and that the contracts are entered into by necessitous persons only because of the scarcity of other rental lands. Among the provisions objected to are the requirement that the tenants pay all taxes and assessments; that the landlord's lien shall extend to all property of the tenants in addition to the crops grown, thus depriving them of property upon which they could secure credit from merchants; and that the tenants are required to construct all buildings and improvements to which the landlord's lien also extends. In addition, the statute recites that the leases contain burdensome provisions controlling farming operations which prevent tenants from earning the money rental, such as the provision that grain stalks grown on the land cannot be fed to the tenant's stock but must be fed to the landlord's stock. As a result of these conditions, the statute recites that:

". . . he [the tenant] is deprived of credit with merchants and banks for the purchase of the comforts and conveniences of ordinary farm life, his children deprived of educational advantages, and himself and family kept impoverished in condition and estate."[42]

3. *The Oklahoma Legislation*

The Oklahoma Legislature was the only legislature out of the many meeting in 1937 that took steps towards a solution of farm tenancy problems through state action.[43] The lack of action in other states may well be explained by lack of interest in the problem, by a wide-spread feeling that the only solution was a farm purchase program which could best be sponsored by the federal government, by hostility to tenant legislation on the part of landlords generally, and by the fact that the report of the President's Farm Tenancy Committee did not appear until many legislative sessions were approaching their end.

The legislation adopted in Oklahoma does not attempt to solve the problems of farm tenancy by immediate regulatory action, but rather provides for a study of the problem and for the improvement of conditions through voluntary action to be taken by landlords. The act declares that its purpose is to establish a closer working relationship between landlord and tenant; to encourage long-term tenancies; and to encourage improvement of farms. In order to accomplish these objectives, the act created the "Oklahoma Farm and Landlord and Tenant Relationship Department," whose duty it is to create a closer relationship between farm landlords and tenants through making a careful study of the landlord and tenant situation and to (a) prepare equitable rental contracts between landlords and tenants; (b) inaugurate an educational program concerning the advantages of long-term contracts; (c) conduct meetings of landlords and tenants in order that a better understanding may be ob-

[42] *Id.* §67-532.
[43] Okla. Laws 1937, S. B. 272. See also note 28, *supra.*

tained between them; (d) assist landlords and tenants in taking advantage of existing farm organizations, associations and cooperatives; and (e) work out a basis for arbitration of differences arising between landlords and tenants.[44]

Perhaps the most important of the points in the above program are the plans to prepare equitable rental contracts and the plans to work out a basis for arbitration of differences between landlords and tenants. It may well be that the provisions of the equitable leases, first worked out as models to be followed voluntarily, will be so widely accepted that they may furnish the basis for later legislation making certain of their provisions compulsory. While the constitutional possibility of certain compulsory regulations of the terms of leases is here discussed as if the problem were one of immediate importance, it must be remembered that there is no chance for the actual passage of such legislation unless the people of the state are reasonably familiar with the effect of such provisions in actual operation. Consequently, an educational program which serves to familiarize them with such provisions, leads the more progressive landlords to adopt them voluntarily, and allows the people generally to observe whether their result is beneficial, is a necessary preliminary to the adoption of legislation compelling the use of such lease provisions. The Oklahoma act seems admirably adapted to the inauguration of this preliminary stage. It is also entirely possible that this stage will alone suffice to remedy many abuses growing out of agricultural leases. If model leases are generally enough adopted by landlords voluntarily and if they prove beneficial to both parties to the lease, it may well be that the minority of landlords not using such leases will be so small that legislation will be deemed unnecessary or that their opposition to it will be ineffectual.

The investigation of arbitration as a means for the settlement of landlord-tenant disputes is also one which offers great possibilities. The existing legal system is generally inadequate for the settlement of such minor disputes. Often they go unsettled, and it appears clear that the existence of such minor disputes is one of the major reasons for the frequent moving of farm tenants.[45] Expenses of law suits are greater than most disputes between landlord and tenant would warrant incurring. Both parties are likely to hesitate to submit technical questions of farm management to a jury, and one party or the other may feel that a jury, or indeed the Justice of the Peace, may be prejudiced in a dispute between a landlord and tenant because of their own positions as either landlords or tenants. Frequently, a money judgment for the landlord is meaningless, since the tenant has no money to pay. As will be subsequently pointed out, the legal obligation upon the tenant to maintain leased agricultural premises is a strict one and the more rapid rate of deterioration, both in buildings and soil, on rented farms[46] is explained, not by laxity in the law, but by

[44] *Id.* §4. [45] Harris, *supra* note 25, at 18-22.

[46] Schickele and Himmel, *Problems of Land Tenure in Relation to Land-Use Adjustment*, RESETTLEMENT ADM'N, LAND-USE PLANNING PUBL. No. 9 (1936); Schickele, Himmel, and Hurd, *Economic Phases of Erosion Control in Southern Iowa and Northern Missouri*, IOWA AGR. EXPT. STA. BULL. 354 (1937); FARM TENANCY REPORT, 50-53; Harris, *supra* note 25, at 11-14.

economic conditions which make it impossible for the tenant to live up to his legal obligation and by the difficulty any landlord would have in proving to a jury just how much of the total deterioration of the farm was due to the actions of any one tenant in any one year. A system of arbitration, with provisions that decisions may be reached on questions of farm management before farming operations are begun, offers the best solution of the problem.

In many respects, the Oklahoma act can be recommended as the best method by which a state can begin a program for the reform of landlord-tenant relationships, since it provides a sound basis through the study of local conditions for working out a program that should prove reasonably acceptable to both landlords and tenants.

THE LAW OF REMOVAL OF FIXTURES

One of the major grievances of tenants and greatest defects in the tenancy system is the rule of law existing in many states that improvements made by a tenant become part of the real estate and cannot be removed at the end of his tenancy.[47] Where the prevailing tenancy is from year to year, the tenant hesitates to invest largely in such improvements, even though he would be willing to do so if he were sure he could retain them because they would tend to make operation of the farm more profitable. In addition, merchants and others hesitate to sell such fixtures on credit where the validity of conditional sales agreements or chattel mortgages may be doubtful because of uncertainty as to the respective rights of the seller and the landlord where the fixtures sold will be affixed to the real estate.[48]

The urban tradesman, of course, is given this privilege of removing his trade fixtures when his tenancy at his place of business expires. The reason for this discrimination against the farmer tenant is historical and dates from the decision in the English case of *Elwes v. Maw*[49] in 1802. In that case the exemption of tradesmen generally from the rule that property attached to the realty becomes a part of it and cannot be removed by the tenant who placed it there, was placed upon the grounds of a public policy to encourage trade and industry. No such public purpose to encourage agriculture, however, was found by the court, and the tenant farmer was held strictly accountable for the value of all the improvements which he had erected and removed. This case came to be the accepted common law rule, but not without judicial dissent, and in some states where it was adopted it has been changed by statute.

[47] Harris, *supra* note 25, at 67-71, and see cases cited *infra*, this section.

[48] There is a split of authority as to priority of rights, and many factors must be considered. See Fears v. Watson, 124 Ark. 341, 187 S. W. 178 (1916) (pumps and fences held subject to chattel mortgage); First State & Sav. Bank v. Oliver, 101 Ore. 42, 198 Pac. 920 (1921) (irrigation pump held part of realty and not subject to chattel mortgage); Beatrice Creamery v. Sylvester, 65 Colo. 569, 179 Pac. 154, 13 A. L. R. 441 (1918) (silo held subject to conditional sales agreement); Gerlach Co. v. Noyes, 251 Mass. 558, 147 N. E. 24, 45 A. L. R. 961 (1925); National Bank v. Wells-Jackson Corp., 358 Ill. 356, 193 N. E. 215, 98 A. L. R. 618 (1934), and cases cited in A. L. R. notes.

[49] 3 East 38 (1802). A previous decision, Penton v. Robart, 2 East 88 (1801), which had granted nurserymen and gardeners the right to remove fixtures, was distinguished on the ground that they were engaged in "trade and industry."

The American courts early displayed a hostility to the rule and many of them refused to follow it. Thus, in New York in 1822, in the case of *Holmes v. Tremper*,[50] the court condemned the rule, saying that there was no reason, justice, or equity in not permitting agricultural tenants to remove improvements which they erected themselves. In 1828 the Supreme Court of the United States condemned the distinction between agricultural tenants and other tenants and permitted a dairyman in the District of Columbia to remove his fixtures.[51] Pennsylvania, similarly, recognized three classes of fixtures—trade, agricultural, and domestic—which were removable.[52]

The judicial movement away from the rule of *Elwes v. Maw* has been hampered by the statutory adoption of the common law rules of real property in some states. Thus, Oklahoma,[53] North Dakota,[54] South Dakota,[55] Montana,[56] California,[57] and other states have, by statute, provided that fixtures affixed for purposes of "trade, manufacture, ornament, or domestic use" may be removed, without making any mention of agricultural fixtures. This statute early constrained the Oklahoma court to indicate that the common law rule was law in that state, although the court criticized the rule in refusing to extend its operation to homestead settlers on government lands, limiting it strictly to landlords and tenants.[58] As a result of this ruling, Oklahoma farmers today cannot remove fences, windmills, lightning rods, or guttering,[59] all fixtures necessary to the successful carrying on of farming operations. Illustrative of decisions under this rule which handicap farming operations by tenants is a North Dakota decision[60] that a Delco electric-light plant cannot be removed from a farm, nor a hay carrier system from a barn, nor water tanks, nor fences, although as to fences a contrary rule obtains in South Dakota under an identical statute.[61] In Nebraska, no statute being applicable, it has been held that corn cribs, cattle, and hog sheds were not fixtures which an agricultural tenant could remove.[62] Such decisions especially restrict the activities of a tenant who desires to engage in livestock

[50] 20 Johns. 29 (N. Y. 1822); *cf.* DuBois v. Kelly, 10 Barb. 496 (N. Y. 1851).

[51] Van Ness v. Pacard, 2 Pet. (27 U. S.) 137 (1828). Similarly, in Harkness v. Sears, 26 Ala. 493 (1855), the court said that the interests of the owner of the soil, as well as public policy, required that agricultural tenants be protected as tenants in trade were.

[52] Pennsylvania first held that a life tenant could not remove a barn, corn crib, and wagon shed, McCullough v. Irvine, 13 Pa. St. 438 (1850), but later limited this case to life tenants only. Carver v. Gough, 153 Pa. St. 225, 25 Atl. 1124 (1893). Now agricultural fixtures are recognized as removable. *In re* Shelar, 21 F. (2d) 136 (W. D. Pa. 1927).

[53] OKLA. STAT. ANN. (1921) §8555.

[54] N. D. COMP. LAWS (1913) §5472.

[55] S. D. COMP. LAWS (1929) §497.

[56] MONT. REV. CODE (1935) §§6819, 6825.

[57] CAL. CIVIL CODE (Deering, 1933) §1019. The Georgia Code (Harrison, 1933) §§61-109, 61-110, recognizes only "trade fixtures" as removable, and the cases indicate that it will be narrowly construed. Wright v. DuBignon, 114 Ga. 765, 40 S. E. 747 (1902); Brigham v. Overstreet, 128 Ga. 447, 57 S. E. 484 (1907).

[58] Winans v. Beidler, 6 Okla. 603, 52 Pac. 405 (1898).

[59] Kilgore v. Lyle, 30 Okla. 596, 120 Pac. 626 (1912).

[60] Klocke v. Troske, 57 N. D. 404, 222 N. W. 262 (1928).

[61] Warner v. Intlehouse, 60 N. D. 542, 235 N. W. 638 (1931) (fences not removable); Joslin v. Linder, 26 S. D. 420, 128 N. W. 500 (1910) (fences removable).

[62] Roden v. Williams, 100 Neb. 46, 158 N. W. 360 (1916).

farming, to improve the farm home, and to hold crops for a favorable market, to diversify his farming activities—in short, the tenant who is most likely to be successful.[63] The tenant in states where the right to remove fixtures is recognized as a part of the common law is in a much better position. Thus, in Pennsylvania a tenant has been permitted to move a silo,[64] and in North Carolina it has been held that a provision in a lease giving the tenant the right to remove poultry-houses and fences merely affirmed his common law rights.[65] Some states have already attempted a modification of the common-law rule by statute,[66] while in other states, such as Illinois,[67] the removal statute extends to agricultural fixtures.

The English themselves abandoned the rule of *Elwes v. Maw*, giving by statute in 1851 the same rights to remove fixtures to farm tenants as are enjoyed by other tenants.[68] Indeed, they have gone much further and have also provided a scheme[69] for compensating tenants for the unexhausted value of the improvements made by them, which will be discussed hereafter.

The question of the removal of fixtures is of importance only where tenants have a certain amount of capital which they could invest in fixtures, if given the assurance that they would be able to remove them. Such a reform would not touch the southern sharecropper who does not even own the necessary removable equipment for use in his farming operations. It would, however, assume considerable importance in many sections, particularly the Middle West, where the tenant owns his own farm equipment and livestock and from time to time has capital available for the purchase of fixtures of value in his farming operations or adding to the comfort of the farm family.[70]

The easiest first step in the adjustment of the tenant's position, aside from purely research and educational activity, is the statutory extension by the states of the doctrine that agricultural fixtures are removable. This is apparent because: (1) there is

[63] In addition, it should be noted that where the tenant has a right to removal as against his own landlord by agreement, he loses that right as against third parties who have no notice of it. Pabst v. Ferch, 126 Minn. 58, 147 N. W. 714 (1914); *cf.* Roden v. Williams, *supra* note 62. Where the purchaser knows or should know of the agreement, the tenant retains the right to removal. Jones v. Cooley, 106 Iowa 165, 76 N. W. 652 (1898) (fence); Esther v. Burke, 139 Mo. App. 267, 123 S. W. 72 (1909) (fence).

[64] *In re* Shelar, *supra* note 52. Mississippi has also been liberal to tenants. Waldauer v. Parks, 141 Miss. 617, 106 So. 881 (1926). Wisconsin has held that a garage, although not a "trade fixture," could be removed, Hanson v. Ryan, 185 Wis. 566, 201 N. W. 749 (1925) relying on Holmes v. Tremper, *supra* note 50, and would apparently permit the removal of agricultural fixtures also.

[65] Causey v. Orton, 171 N. C. 375, 88 S. E. 513 (1906). In North Carolina it has even been held that manure may be removed as an agricultural fixture, Smithwick v. Ellison, 24 N. C. 326 (1842), but in other states the removal of manure needed to maintain the fertility of the soil is regarded as a violation of the rules of good husbandry, discussed hereafter.

[66] The Kansas legislation, already discussed, meets the problem with regard to the large landlords to whom it is applicable. Other states, such as North Dakota, Laws 1929, c. 129, have exempted certain types of farm equipment from the operation of the rule, and permit tenants to remove any granary, bin, or other building placed upon the farm for the purposes of storing grain.

[67] ILL. REV. STAT. (Smith-Hurd, 1936) c. 80, §34.

[68] Landlord and Tenant Act, 1851, 14 & 15 VICT., c. 25.

[69] Agricultural Holdings Act, 1923, 13 & 14 GEO. V, c. 9.

[70] FARM TENANCY REPORT, 55-58.

no doubt as to the constitutionality of such a statute, if properly drawn, because of the well-established rule that no deprivation of property is involved in the mere change of a rule of law before rights are vested;[71] (2) this situation already exists, wholly or in part, in a number of states, as common law doctrine or by statute; (3) for over a century American courts have questioned the wisdom of the old rule, even when they felt constrained to follow it; (4) to adopt such a rule would accord the farmer the same rights granted earlier to businessmen (including nurserymen and gardeners); (5) its adoption furnishes a degree of protection to farmers in their investment in improvements and encourages them to make them; and (6) since no cash outlay is required of the landlord who, under the share system, will share in the profits from increased productivity caused by certain improvements, there is little chance of vigorous opposition to the proposed change.

It should be noted, however, that this easy reform is not a panacea. There are many improvements desirable to make but physically impossible to remove. Others are economically impossible or undesirable to remove. If the tenant, for example, is moving to a farm which already has the fixtures he has installed, he may choose to abandon them if there is no ready market for them. Consequently, other measures are necessary, such as provision for compensation, for a complete solution of the problem.

THE TENANT'S OBLIGATION TO PRESERVE THE PREMISES

From the point of view of the general public, one of the most serious consequences of the widespread prevalence of farm tenancy is the rapid deterioration in tenant-operated farms.[72] This tendency has already become a serious menace to the nation's soil resources, and while many farm owners have adopted extremely bad land-use practices, naturally landowners who will receive the resulting benefits will be more likely to cooperate in future programs of soil conservation than tenants who must do the work but will not stay on the farm to receive the benefits.

The law has always recognized and attempted to curb the natural desire of a tenant to get as much out of a farm during his occupancy as possible. Thus, in the early common law, waste, such as the cutting of trees or the destruction of buildings, was prohibited, and these prohibitions were strengthened by thirteenth century statutes.[73] Punitive damages were allowed, and there was also a remedy by injunction.

In addition to the old common law action for waste, at a later period it was held that a covenant to cultivate the land according to the rules of good husbandry was an implied term of all agricultural leases.[74] The difference between the two rules of law, both designed to meet the same evil, is well illustrated by two Delaware

[71] O'Neil v. Northern Colorado Irrig. Co., 242 U. S. 20 (1916).

[72] See note 46, *supra*.

[73] Stat. of Marlborough, 52 Hen. III, c. 23, §2 (1267); Stat. of Gloucester, 6 Edw. I, c. 5 (1278).

[74] Lewis v. Jones, 17 Pa. St. 262 (1851); Walker v. Tucker, 70 Ill. 527 (1873); Prysi v. Kinsey, 38 Ohio App. 92, 175 N. E. 707 (1930).

cases. In the first,[75] an action for damages for waste was denied where a field had been planted in corn for three years in succession on the ground that mere ill husbandry was not waste. In the second,[76] an injunction against planting land in corn for two years in succession was granted, the court saying that any abuse of the land by the tenant which tends to its injury ought to be restrained. In establishing these doctrines the courts clearly recognized the temptations to tenants to overcrop, to neglect repairs and to adopt bad farming practices, and the difficulties landowners would have in ascertaining the amount of damage and collecting it from their tenants.[77] Similarly, in asserting the now well-established rule that manure must be used as fertilizer on the farm on which it is produced, the Pennsylvania court recognized that tenants for short or uncertain terms would feel no interest in preserving the fertility of the soil, and that, if permitted to exhaust it, the results would be ruinous to both landlords and tenants and injurious to the public interest.[78]

Now that it seems that the results feared by the early courts of New York and Pennsylvania have arrived, more than an implied covenant in a lease to farm according to the rules of good husbandry is required. Placing a legal burden upon a tenant is not enough if his economic condition is such that he can neither fulfill his legal obligations nor pay damages for failure to do so. The practical failure of the American law requiring that the premises be preserved may in part be accounted for by the fact that the tenant could claim no compensation from the landlord where he adopted farming practices which were beneficial to the land. Apparently only one American tenant has been so audacious as to claim such a right. In the case of *Bullitt v. Musgrave*,[79] where the tenant was sued for waste in that he cut wood from the farm, he counterclaimed that his method of cultivating the farm benefited the landlord, since he used more manure on the farm than was produced there. The court ruled, however, that this was immaterial. Nevertheless, this solution of allowing the landlord compensation for deterioration to the farm and the tenant compensation for improvements to it is the one adopted in England.[80] In addition to its successful operation there, the reciprocal advantages of allowing compensation to both parties appear when it is remembered that to prevent real deterioration in a farm, improvements must be made both in the soil and in the buildings, the value of which is not exhausted within a single year. As a practical matter, a tenant is bound to leave a farm in either better or worse condition than that in which he found it.

[75] Richards v. Torbert, 3 Houst. (8 Del.) 172 (1865).

[76] Wilds v. Layton, 1 Del. Ch. 226 (1822).

[77] Sarles v. Sarles, 3 Sandf. Ch. 601 (N. Y. 1846).

[78] Lewis v. Jones, *supra* note 74. Other cases establishing the same obligation with regard to manure, for similar reasons, are Whitesell v. Collison, 94 N. J. Eq. 44, 118 Atl. 277 (1922); Lassell v. Reed, 6 Me. 222 (1829); Perry v. Carr, 44 N. H. 118 (1862); Elting v. Palen, 60 Hun 306, 14 N. Y. S. 607 (1891); Brigham v. Overstreet, *supra* note 57.

[79] 3 Gill. (Md.) 31 (1845). *Cf.* Auginbaugh v. Copenheffer, 55 Pa. St. 347 (1867); Tollefson v. Tollefson, 171 Wis. 149, 176 N. W. 879 (1920).

[80] See note 69, *supra*.

The deterioration of tenant farms may also be in part explained by the fact that American farmers generally have adopted methods of cultivation which exhausted the soil, and that, in so doing, tenants have only done what the owners themselves would have done. This American custom resulted in a relaxation of the English law of waste with regard to the cutting of trees because of the supposedly unlimited supply of timber,[81] the relaxation of the rule against the plowing up of sod land,[82] and the adoption of the rule that what constitutes good husbandry is a question of fact for the jury.[83] This latter rule, coupled with the rule that the practice in the community was evidential of what was good husbandry, led in North Carolina at least to sanctioning the rule that tenants could deliberately follow a policy of completely exhausting the land and then moving onto new land.[84] While the North Carolina law represents an extreme instance, nevertheless, it illustrates the point that the law of waste and the implied covenant to cultivate the land according to the rules of good husbandry have afforded inadequate protection to American farms.

In drafting a statute defining what constitutes good husbandry, either to define the duty of the tenant or to give the landlord a set-off against a tenant's claim to compensation for improvements under a statute, the things already held by the courts to constitute waste or ill husbandry furnish a valuable guide. Among these condemned practices are failure to rotate crops,[85] overgrazing,[86] plowing up all sod land,[87] destruction of wood lots,[88] allowing weeds to grow,[89] failure to spread manure produced on the premises,[90] failure to feed grasses produced on the farm to livestock there,[91] over-tillage of fields,[92] injury to orchard trees,[93] grazing on wet land,[94] and permitting hogs to root up meadow land.[95]

The deterioration of buildings, fences, roads, and bridges, is also a serious problem on tenant-operated farms. Generally, a tenant is not bound to make substantial, lasting, or general repairs, but only such ordinary repairs as are necessary to prevent

[81] Davis v. Gilliam, 40 N. C. 308 (1848); Owen v. Hyde, 6 Yerg. (14 Tenn.) 334 (1834); Keeler v. Eastman, 11 Vt. 293 (1839).

[82] Proffitt v. Henderson, 29 Mo. 325 (1860); Mize v. Burnett, 162 Mo. App. 441, 145 S. W. 150 (1912); Keeler v. Eastman, *supra* note 81; Hubble v. Cole, 85 Va. 87, 7 S. E. 242 (1888).

[83] Clemence v. Steere, 1 R. I. 272 (1850); Pynchon v. Stearns, 11 Metc. (Mass.) 304 (1846); King v. Miller, 99 N. C. 583, 6 S. E. 660 (1888); Tuttle v. Langley, 68 N. H. 464, 39 Atl. 488 (1896); Wing v. Gray, 36 Vt. 261 (1863).

[84] King v. Miller, *supra* note 83; *cf.* Darden v. Cooper, 52 N. C. 210 (1859). The attitude of the Virginia court in the same year, in Hubble v. Cole, *supra* note 82, contrasts strongly with the attitude of the North Carolina court.

[85] See note 76, *supra*.

[86] Marshall v. Rugg, 6 Wyo. 270, 44 Pac. 700, 45 Pac. 486 (1896); Gorman v. Brazelon, 168 S. W. 434 (Tex. Civ. App. 1914).

[87] Chapel v. Hull, 60 Mich. 167, 26 N. W. 874 (1886).

[88] Sarles v. Sarles, *supra* note 77; Clemence v. Steere, *supra* note 83.

[89] Lee v. Werda, 124 Wash. 168, 213 Pac. 919 (1923); Pierce v. Burroughs, 58 N. H. 302 (1878), and see weed statutes *infra* note 106.

[90] See note 78, *supra*. [91] Sarles v. Sarles, *supra* note 77. [92] *Ibid.*

[93] Thompson v. Cummings, 39 Mo. App. 537 (1890); Silva v. Garcia, 65 Cal. 591, 4 Pac. 628 (1854).

[94] Friemel v. Coker, 218 S. W. 1105 (Tex. Civ. App. 1920).

[95] Bellows v. McGinnis, 17 Ind. 64 (1861).

waste and deterioration.[96] This obligation has been described as an implied covenant to so use the premises as to avoid the necessity for repairs as far as possible.[97] Where the tenants change annually, no tenant can leave the premises just as he found them. After a series of tenants have subjected the premises to normal wear and tear, the final tenant is faced with the choice of making extensive repairs which his uncertain tenure does not justify financially, or of using the premises while they are in such a state of disrepair that his farming operations are considerably handicapped.

One solution of this problem is to place the burden of repairs primarily upon the landlord and hold the tenant responsible only for the careful use of the property. This solution, found in the Roman Civil Law, has been adopted in some states, both for urban and rural property.[98] Thus, in Georgia[99] the duty to make the repairs is upon the landlord after notification by the tenant. If the landlord fails to act after a reasonable opportunity, the tenant may make the repairs himself and either look to the landlord for reimbursement or occupy the premises without repair and hold the landlord responsible for damages by action or by recoupment to an action for rent.[100] Similar legislation with regard to dwelling-houses exists in such states as Montana,[101] North Dakota,[102] South Dakota,[103] and Oklahoma,[104] and there is no reason why it could not be adopted by other states or extended to cover all buildings on leased farms.

Practically all states, by statute, have enacted legislation under the police power regulating the subject of fencing,[105] and placing the duty of maintaining them variously upon the owner, the occupier, or both. Similar statutes have been enacted, practically universally, providing for the eradication of noxious weeds,[106] or for the

[96] 1 TIFFANY, REAL PROPERTY (1898) §44; 2 THOMPSON, REAL PROPERTY (1924) §1525.

[97] U. S. v. Bostwick, 94 U. S. 53 (1876).

[98] Viterbo v. Friedlander, 120 U. S. 707 (1886) (discussing civil law origins of Louisiana provisions); Smithfield Improvement Co. v. Coley-Bardin, 156 N. C. 255, 72 S. E. 312 (1911) (discussing difference between civil law and common law rules). Statutes adopting the civil law rule are: GA. CODE (Harrison, 1933) §61-111; LA. CIVIL CODE (Dart, 1932) §§2692-2700. The Louisiana provisions are adopted from the Code Napoleon, Deehan v. Youree, 161 La. 806, 109 So. 498 (1926). Some states, such as California, have imposed an obligation upon landlords to repair all dwelling houses. CAL. CIVIL CODE (Deering, 1933) §§1941-1942, and state statutes cited, *infra* notes 101-104, while others have imposed the obligation only upon landlords in certain classes of cities, IOWA CODE (1935) §§6327, 6392, or on owners of certain types of dwellings. Tenement House Law, N. Y. CONS. LAWS (Cahill, 1930) c. 62, §102.

[99] By another provision of the Georgia Code, in the tenancy for years, a usual type of farm tenancy, the obligation to repair is upon the tenant. GA. CODE (Harrison, 1933) §85-805.

[100] Dougherty v. Taylor & Norton, 5 Ga. App. 773, 63 S. E. 928 (1909); Rhodes v. Jackson, 161 La. 505, 109 So. 46 (1926). That repairs are also some improvement is immaterial. Dougherty v. Taylor & Norton, *supra*.

[101] MONT. REV. CODE (1935) §§7741-7742.

[102] N. D. COMP. LAWS (1913) §§6090-6091.

[103] S. D. COMP. LAW (1929) §§1057-1058. And see Armstrong v. Thompson, 62 S. D. 567, 255 N. W. 561 (1934).

[104] OKLA. STAT. ANN. (1921) §§7370-7371.

[105] See note 22, *supra*. At common law it is sufficient if the tenant keeps the fences in as good repair as he finds them. Hoyleman v. Kanawa & O. Ry. Co., 33 W. Va. 489, 10 S. E. 816 (1890).

[106] There is no obligation to kill noxious weeds for the protection of adjoining landowners at common law, Langer v. Goode, 21 N. D. 462, 131 N. W. 258 (1911), although tenants are required to keep down filth, such as elders and briers, for the benefit of landlords. Windon v. Stewart, 43 W. Va. 711, 28 S. E. 776 (1897). Statutes may impose this burden upon landowners and include provisions for the

spreading of poison to kill pests.[107] In the case of operations which must be repeated from year to year, such as weed eradication and killing pests, there seems to be no great objection to placing the burden on the tenant who can do the work most conveniently. But as to farm boundary fences, a great burden is placed upon the tenant if he is forced either to build them initially or to make extensive repairs. This problem has been solved in Montana[108] by requiring the owner to build initially and the occupant to repair. The Nebraska crop pest statute[109] requires the owner to buy the poisons and the tenant to spread them. The Wisconsin weed eradication statute[110] places the burden upon both the owner and the occupier and it has been held that, under a contract for compensation for improvements, the tenant could not recover expenses of weed removal because he was merely performing a statutory duty.[111]

Where the state is acting under its police power in requiring the maintenance of premises, as it is under the statutes considered in this section, the state is free to place the burden of complying with the regulation upon either the owner or the occupier or both. There is a tendency to place such burdens upon the actual occupant of the land to better insure observance of the regulation, since this is the state's primary objective. However, where capital expenditure is required, permanently benefiting the property, it would appear better practice to impose the burden, at least in part, upon the landowner. The tenant can often ill afford the expenditure from which the landowner and succeeding tenants may be the principal beneficiaries. Similar reasons indicate the desirability of placing the primary burden for making repairs upon the landowner.

THE BRITISH LEGISLATION

The English Parliament had previously been faced with problems of farm tenancy in England, Scotland, and Ireland, essentially similar to those now facing America. As in America, although to a greater extent, the ownership of land was in the hands of absentee landlords, and the relationships between landlord and tenant were governed, in England and Ireland at least, by the same principles of the English common law as prevail in American states where modifying statutes have not been adopted. For these reasons the British experiences offer useful lessons for consideration in adjusting landlord-tenant relationships in this country.

With regard to Ireland, the solution chosen was a program of converting tenants into landowners through purchase of the absentee landlords' holdings and resale to

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collection of costs of doing the work from them. Wedemeyer v. Crouch, 68 Wash. 14, 122 Pac. 366 (1912); State v. Boehm, 92 Minn. 374, 100 N. W. 95 (1904); Metropolitan Life Ins. Co. v. Twin Falls Co., 56 Idaho 93, 50 P. (2d) 7 (1935); Gray v. Thone, 196 Iowa 532, 194 N. W. 961 (1923); State v. Dawson, 38 Ind. App. 483, 78 N. E. 352 (1906) (imposing criminal penalties against owner or occupant for allowing weeds to grow). *Cf.* People *ex rel.* Van Slotten v. Cook Co., 221 Ill. 493, 77 N. E. 914 (1906), holding certain collection procedures invalid in a weed eradication statute and the present statute. ILL. STAT. ANN. (Jones, 1936) §2.124-2.134.

[107] See note 23, *supra.*

[108] MONT. REV. CODE (1935) §§6777-6778.

[109] Note 23, *supra.*

[110] WIS. STAT. (1935) §§94.20-94.25. A similar statute exists in Oklahoma, OKLA. STAT. (1931) §§8880-8889.

[111] Tollefson v. Tollefson, *supra* note 79.

tenants under a program very similar to that about to be inaugurated by the Farm Security Administration.[111a] In England, however, the landlord was felt to have a permanent place in the agricultural system and efforts were directed toward improvement of landlord-tenant relationships through regulatory legislation.[112] In Scotland the two approaches were combined, with primary emphasis upon the improvement of landlord-tenant relationships by methods similar to those used in England.[113]

Space does not permit a recital of the gradual advances which were made in England from the passage of the Landlord and Tenant Act, 1851,[114] giving tenants the right to remove agricultural fixtures, until the Agricultural Holdings Act, 1923,[115] now regulating landlord-tenant relationships. The major provisions of the latter act, however, will be briefly summarized since they may furnish a model for American legislation, and, even if rejected as unsuited to American conditions, suggest subjects upon which legislative reform should be considered.

The central aim of the English act is to encourage the tenant to adopt improved farming practices and to make farm improvements by assuring him of compensation for the resulting increase in value of the farm, to assure him security of tenure or to compensate him for moving expenses where his removal is forced without cause, and to penalize the tenant if he permits deterioration. To achieve this result, the act classifies improvements into three classes. The first class, compensable only if they are made with the landlord's consent, includes such major permanent improvements as planting of permanent crops or orchards, clearing of land, the construction of buildings, works of irrigation or flood control, and permanent improvements such as dams, roads, bridges, and fences. In the second class, compensable only if the landlord is notified, but for which his consent is not required, is placed drainage work only. In the third class, compensable without notice to the owner or his consent, are listed certain operations designed to increase soil fertility, the value of which is exhausted in a comparatively short time but not within one crop year, and the laying down of temporary pasture. In addition, it is provided that the tenant may claim compensation for repairs, if the landlord is notified of their need and given an opportunity to make them.

The value of an improvement for determining the amount of compensation payable is defined as its value to an incoming tenant, so that the question of whether the outgoing tenant made the improvement as economically as possible and calculation of depreciation are avoided. These values are determined by an arbiter agreed upon by the parties or, in default of such an agreement, by the Minister of Agriculture and

[111a] FARM TENANCY REPORT, 75-77.

[112] FARM TENANCY REPORT, 72-74, Harris, *Agricultural Landlord-Tenant Relations in England and Wales*, RESETTLEMENT ADM'N, LAND USE PLANNING PUBL. No. 4 (reprinted in LAND USE PLANNING PUBL. No. 4a) (1936).

[113] FARM TENANCY REPORT, 74-75, Harris and Schepmos, *Scotland's Activity in Improving Farm Tenancy*, in LAND POLICY CIRCULAR (Feb. 1936), (reprinted in RESETTLEMENT ADM'N LAND USE PLANNING PUBL. No. 4a (1936)).

[114] See note 68, *supra*.

[115] See note 69, *supra*.

Fisheries from a panel appointed by the Lord Chief Justice. The arbiter's determination, in most instances, is final, so that there is no necessity for court procedure. The arbiter is authorized to award additional compensation if the tenant has followed a system of farming superior to that required by his lease, thereby adding value to the property.

In addition, continuous tenure is encouraged by requiring the landlord to pay compensation to the tenant for disturbance, even though the lease has terminated and due notice given. The tenant, however, may not claim compensation under this provision if he is not cultivating the holding according to the rules of good husbandry, if he has violated the provisions of the lease, failed to pay his rent, refused to submit to arbitration the question of the rent to be paid or to enter into a written lease, or if he is bankrupt. The act authorizes the landlord to apply to the local agricultural committee for a certificate that the tenant is violating the rules of good husbandry. This section also requires the landlord to pay compensation for disturbance if he refuses to submit to arbitration the rent to be paid for the next term. The measure of compensation for disturbance is placed at the expenses incurred by the tenant in moving, with a provision that it shall be deemed to be equal to one year's rent, unless it is shown that the actual expenses are greater, but in no event shall it exceed two years' rent.

On the other hand, the act provides that the landlord may claim compensation from the tenant where the value of the holding has deteriorated because of the tenant's failure to cultivate the land according to the rules of good husbandry or the terms of the lease. The amount of compensation payable to landlord or to tenant is determined by the arbiter.

In addition to the question of the adaptability of the English statute to American conditions, the question whether such a statute would be constitutional under American constitutions necessarily arises. Theoretically, the state legislatures have basically the same powers as the English Parliament,[116] in the absence of express limitations in the state and federal constitutions, the most important of which is the "due process" clause. Although no court has the power to declare an act of Parliament unconstitutional, the British lawmakers are guided by an unwritten constitution composed of such historic documents as Magna Carta and of traditions which should prevent the same type of unfair and unreasonable action that in America is prevented by court action under the "due process" clause. "Due process of law" has often been defined as meaning the same thing as the phrase "the law of the land," as used in Magna Carta as a guarantee to the citizens against arbitrary governmental action.[117]

[116] The analogy to the powers of Parliament apparently was first used in Thorpe v. Rutland R. Co., 27 Vt. 140 (1854), in upholding a statute requiring railroads to erect fences and cattle guards, and has since been extensively quoted. COOLEY, CONSTITUTIONAL LIMITATIONS (7th ed. 1903) 128; Mitchell v. Winnek, 117 Cal. 520, 49 Pac. 579 (1897).

[117] It has been held that procedure which was valid in England prior to the adoption of the American Constitution, is valid under the due process clause, Murray v. Hoboken Land etc. Co., 59 U. S. 276 (1856), and on procedural matters, while the door is not closed to progress, serious consideration must be given to what has always been considered fair practice. Twining v. New Jersey, 211 U. S. 78

While it is unsafe to assume that American courts will agree with the English Parliament on the "constitutionality" of such legislation, nevertheless, the objective of the English legislation is to benefit the general public through the existence of an improved tenancy system, and not to favor the tenants. It is reasoned that the public in general is benefited by long-range farm planning, by the conservation of national soil resources, by improvements on tenant-operated farms, and by the stability of tenure which the compensation statute encourages. An American court which recognized that agriculture was an industry affected with a public interest to the same extent that the English Parliament has so considered it, might well uphold a statute modeled after the English Agricultural Holdings Act, 1923. Traditionally, in America, however, agriculture has been an industry over which the state has exercised little control under the police power, except where production was threatened by pests, and there are many cases in which agriculture has been used as an illustration of those things which the state could not regulate.[118] Since debate might go on endlessly as to whether or not comprehensive regulation of landlord-tenant relationships is constitutional in this country in view of the general doctrine of liberty of contract,[119] it is more profitable to consider separately the constitutionality of each regulation that has been proposed.

THE PRESIDENT'S COMMITTEE'S RECOMMENDATIONS

As has already been noted, the President's Committee on Farm Tenancy, besides its recommendations for a federal program to aid tenants to become owners, recommended[120] that the states consider specific suggestions for the improvement of lease contracts and landlord-tenant relationships discussed below, with regard both to problems which may be encountered in drafting legislation to effect them and to the major arguments for or against their constitutionality. The proposals are as follows:

(1908). The identity of the concepts of "due process" and of the "law of the land," however, is not confined to procedural matters, and has been referred to by the United States Supreme Court in considering and upholding the substantive validity of a statute. Missouri Pacific R. Co. v. Humes, 115 U. S. 512, 519 (1885) (upholding statute requiring railroads to erect fences). In any event, it seems clear that the American "due process" is a development of the English "law of the land" and that the English themselves have not limited the concept to procedural matters. MOTT, DUE PROCESS OF LAW (1926) 83-86.

[118] Gas Products Co. v. Rankin, 63 Mont. 372, 207 Pac. 993 (1923); New State Ice Co. v. Liebman, 285 U. S. 262, 277 (1932) (dictum refers to business of dairyman as "essentially private"); Wolff Co. v. Industrial Court, 262 U. S. 522 (1923).

[119] The doctrine of liberty of contract has most generally been applied in the field of employer-employee relations, and the cases admit that it is merely a general rule to which exceptions may be made in proper instances. Exceptions to the doctrine are listed in the dissenting opinion of Chief Justice Hughes in Morehead v. People *ex rel.* Tipaldo, 298 U. S. 587, 628 (1936). It has long been recognized that the class of contracts which may be regulated may be expanded by changing conditions and that unequal bargaining power may furnish an adequate basis for regulation. German Alliance Ins. Co. v. Lewis, 233 U. S. 389 (1914).

[120] The recommendations of the President's Committee are (1) for federal action in various fields, FARM TENANCY REPORT, 11-17, (2) for state action in improvement of lease contracts and landlord-tenant relationships, *id.* at 17-18, (3) for differential taxation of farm lands by the states, *id.* at 18-19, (4) for safeguarding civil liberties, *id.* at 19, and (5) for cooperative state and federal programs, *id.* at 18-19. This paper is concerned only with point 2.

"(a) Agricultural leases shall be written";

Provisions of the Statute of Frauds that leases for a term of more than one year, or, in some states, for more than three years, must be in writing, afford ample precedent to sustain the constitutionality of this type of legislation.[121] The reason for the proposal is the well-founded belief that many minor disputes between landlords and tenants will be eliminated if the matters are considered and a definite written understanding reached at the time the property is rented.

A mere statutory declaration that agricultural leases must be written, however, is not sufficient to solve the problem. The custom among most landlords and tenants to enter into oral contracts will not be easily ended. Furthermore, it will be easy for the landlord to secure printed forms, intentionally drafted to favor the landlords perhaps even more than do most existing contracts, so that while there will be some gain for the tenant in knowing definitely what his obligations are, he risks finding his new definite obligations greater than his previous indefinite ones.

If the model of the Statute of Frauds is followed or the existing Statute is amended, doctrines developed under the Statute of Frauds which give certain effectiveness to leases that are invalid, because oral, would probably be applied to protect the tenant who entered a farm and started to make a crop without securing a written lease.[122] Although this may lead to a general disregard of the statutory requirement, nevertheless, it protects the tenant who inadvertently neglects to insist upon a written lease or whose landlord refuses to grant one. It would be undesirable to declare oral leases absolutely void, for the tenant who had expended labor and capital in starting a crop would find that he had no rights in the land or in his growing crop. The effect of disregard of the statute should be included in its terms.[123]

A statute which provided that all leases should be written, however, could be so drafted as to afford an opportunity for at least a partial reform of the tenancy system

[121] The constitutionality of the Statute of Frauds has never been seriously challenged, and it has been cited as illustrative of a constitutional type of regulation of the right to contract. Republic Iron etc. Co. v. State, 160 Ind. 379, 66 N. E. 1005 (1903); Adinolfi v. Hazlett, 242 Pa. St. 25, 88 Atl. 869 (1913). One state at least has extended its scope in a manner similar to that here proposed by requiring that all contracts of insurance be in writing. Delaware Ins. Co. v. Pennsylvania Fire Ins. Co., 126 Ga. 380, 55 S. E. 330 (1906)

[122] The original English Statute of Frauds, *supra* note 22, provided that leases invalidated by it take effect as estates at will, and this provision is copied in some states. In others the lease may take effect as an estate at will or as a lease from month to month or from year to year, depending upon statutory presumption, or the period by which rent is paid. Cases are collected in Note (1913) 42 L. R. A. (N. S.) 648. The doctrine of part performance, by which a lease is taken out of the Statute, is also applied, but there are varying rules as to what will be considered sufficient part performance. The cases are collected in Note (1924) 33 A. L. R. 1489-1543. See generally on the effect of the Statute of Frauds on leases, 2 THOMPSON, *op. cit. supra* note 96, at 238-257.

[123] It should be noted that three questions are presented, all of which, in view of the varying rules of the cases, should be settled in the proposed statute: (1) Under what circumstances shall the oral lease be held to be valid and enforced according to its terms? (2) If the oral lease is not to be enforced according to its terms, what terms shall be implied by law when the tenant has entered possession or has begun the production of a crop? (3) Under what circumstances should certain provisions of the oral lease, *e. g.*, the amount of rent, be enforced and others not enforced, and provisions implied by law, *e. g.*, the duration of the tenancy, substituted.

by providing that, in the absence of different provisions in a written lease, certain provisions should be presumed to be a part of all agricultural leases. The practical effectiveness of this procedure would depend upon the extent to which landlords adopted form leases with provisions contrary to those of the statute, but, in any event, such a statute would serve to bring the contents of model provisions to the attention of the parties and strengthen the tenant's argument for their inclusion in the lease. If this suggestion were adopted, the statute might well provide that provisions for the reforms to be discussed below should be presumed part of the lease if these reforms were not embodied in other compulsory legislation.

Legislation in this form would present no constitutional problems, since the parties would be given the right to protect all their interests through making a specific written provision contrary to the statutory presumptions.

"(b) All improvements made by the tenant and capable of removal shall be removable by him at the termination of the lease";

The desirability and constitutionality of this reform, already law in a number of states, has been discussed previously under the heading "The Law of Removal of Fixtures."

"(c) The landlord shall compensate the tenant for specified unexhausted improvements which he does not remove at the time of quitting the holding, provided that for certain types of improvements the prior consent of the landlord is obtained";

This recommendation, in effect, is for the adoption of legislation similar to the provisions for compensation for improvements in the British Agricultural Holdings Act, 1923, already discussed. The most important deviation from the British model is the lack of provision for the fixing of rental through arbitration. As the discussion of the unsuccessful attempt to regulate agricultural rentals in Texas has indicated, there is a grave possibility that American courts would hold this to amount to a deprivation of the landlord's property without due process of law. The situation is slightly different, however, where the amount of rent is left to the free bargaining of the parties and the owner who believes the compensation provisions of the statute to be burdensome is given the opportunity to recoup his prospective losses by charging a higher rental. With regard to the improvements for which the landlord's consent is required, no constitutional problem appears, since the landlord is given ample protection through his right to refuse his consent.

Constitutional questions arise, however, when it is proposed to make the landlord pay compensation for improvements made without his consent or notice to him. Many of the improvements which would be included in this class, however, are improvements which result in preserving the fertility of the soil, the value of which is not exhausted during an annual tenancy but which the tenant must make if he is to bring the farm to full productivity during his tenancy.

It remains merely to demonstrate that a compensation statute is appropriate

action to safeguard the state's interest in its agricultural and soil resources. Compensation has been recognized in at least two states as an appropriate means to secure justice for tenants as a substitute for the common law right of emblements, where they are forced to move before they have harvested their crops.[124] Progressive landlords have voluntarily incorporated provisions for compensation in their leases in limited instances to encourage improvements beneficial to themselves also.[125] The courts have specifically indicated that the problems of tenancy may appropriately be met by legislative action, in discussing and upholding statutes designed to aid tenants in becoming owners and to prevent owners from losing their farms.[126] It is conceivable that the general interest of the state in maintaining agricultural production and the welfare of the farm population[127] would justify the state in absolutely requiring landowners to maintain the fertility of their soil. If this extreme measure might be justified in theory, then the comparatively mild step of requiring landowners to bear part of expenses incurred by tenants who voluntarily take steps to preserve the fertility of the soil would be justified. There appears to be abundant scientific evidence that soil preservation requires operations, the value of which is not exhausted during any one annual tenancy. The statistics showing the more rapid deterioration of tenant farms would afford justification for a classification

[124] Virginia, VA. CODE (Michie, 1936) §5542, and North Carolina, N. C. CODE (Michie 1935) §2347, authorize a tenant entitled to emblements to receive compensation for his work in preparing the ground for crops which he does not harvest, because his tenancy is terminated. The North Carolina statute was held constitutional in King v. Foscue, 91 N. C. 116 (1884). The common law right of emblements is the right of a tenant who had planted crops, reasonably expecting to remain on the land long enough to harvest them, to return to the land and harvest, if his tenancy is unexpectedly terminated, and exists because of the public policy to give justice to tenants. Stedman v. McIntosh, 26 N. C. 291 (1844).

[125] Lease forms in actual use, which contain some provision for compensation, are collected in Harris, *Compensation as a Means of Improving the Farm Tenancy System*, *supra* note 25, App. A, pp. 100-104, and discussed, pp. 27-30.

[126] Statutes authorizing state aid to tenants to become owners through loans and land settlement projects, have been upheld in decisions recognizing the undesirable features of tenancy. Wheelon v. S. D. Land Settlement Board, 43 S. D. 551, 181 N. W. 359 (1921); State *ex rel.* State Reclamation Board v. Clausen, 110 Wash. 525, 188 Pac. 538 (1920); Veterans' Welfare Board v. Jordan, 189 Cal. 124, 208 Pac. 284 (1922); Green v. Frazier, 253 U. S. 233 (1920), *aff'g* 44 N. D. 395, 176 N. W. 11 (1920). Similar encouragement of home ownership under urban conditions has been held unconstitutional. *In re* Opinion of the Justices, 211 Mass. 624, 98 N. E. 611 (1912). Loans to farmers who own farms have been justified as a means of preventing the increase of tenancy. Cobb v. Parnell, 183 Ark. 429, 36 S. W. (2d) 388 (1931); Hill v. Rae, 52 Mont. 378, 158 Pac. 826 (1916). Similarly, the seriousness of the tenancy problem has been recognized by the courts in passing on federal farm loan programs. Federal Land Bank v. Gaines, 290 U. S. 247 (1933) (noting "national demand" for system). The increase in tenancy which would otherwise result has also been relied upon in holding mortgage moratoria statutes valid. Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398, 420-425 (1934), *aff'g* 189 Minn. 422, 249 N. W. 334 (1933).

[127] Expenditures for farm aid are justified generally on this theory, including aid to agricultural societies. Blume v. Crawford Co. Farm Bureau, 217 Iowa 545, 250 N. W. 733, 92 A. L. R. 757 (1934). Similarly, the Federal Agricultural Marketing Act has been justified. North Dakota-Montana Wheat Growers Ass'n v. U. S., 66 F. (2d) 573, 92 A. L. R. 1484 (C. C. A. 8th 1934). Activities as diverse as the killing of weeds, State v. Boehm, 92 Minn. 374, 100 N. W. 95 (1904), the dipping of cattle, State v. Hodges, 180 N. C. 751, 105 S. E. 417 (1920), establishing a state banking and business system, Green v. Frazier, *supra* note 126, a state warehouse, State *ex rel.* Lyon v. McCown, 92 S. C. 81, 75 S. E. 392 (1912), and loans to farmers, Hill v. Rae, *supra* note 126, have been justified on the ground that they contribute to the welfare of a basic industry of the state.

singling out such farms for the first, and perhaps the only, attempt to meet the problem through legislation.[128]

Fundamental objections to such a compensation statute may be raised upon the grounds that the landowner has a right to use his property as he wills and to contract concerning it as he desires. Certainly a compensation statute does modify these rights. Under proper circumstances, however, the rights of property owners have been repeatedly limited, and the doctrine of freedom of contract admits of exceptions in the public interest.[129] Within comparatively recent years, the right of the state to rather completely regulate the use of property through urban zoning ordinances has been established,[130] and the legislatures of some states have assumed that the zoning principle could be extended to rural conditions.[131] In England it has been recognized that the right of the state to regulate property and contractual relationships extends both into the field of employer-employee relationships and landlord-tenant relationships, for similar reasons, and this change, because of the public benefits, has been acceptable to the landlords themselves.[132]

Yet a statute providing for compensation to tenants for improvements is admittedly an advance step and it is by no means certain to be upheld by all courts. It is practically the unanimous opinion of agricultural economists that this step should be taken, and they can furnish facts which should demonstrate to a court that the step is a reasonable one.[133] In addition, comparable provisions for compensation, adopted in many foreign countries where conditions are essentially similar to those in this country, are apparently working successfully.[134] In the face of this situation, it will be for the judges to determine whether the present state of American law must be preserved because of constitutional necessity or whether the field is one where a departure from existing law is justified by the public benefits to be derived from this method of encouraging tenants to maintain the fertility of their landlords' farms.

The other class of improvements for which compensation may be proposed, even though they are made without the landlord's consent, are improvements relating to the repair and maintenance of farm buildings or other structures. As has already been seen in the discussion of the law with regard to the maintenance of the premises, the entire burden of making repairs could be placed upon the landlord. Hence, he is being deprived of no constitutional rights if he is merely made to share it.

[128] Note 46, *supra*. It should be noted that all the improvements for which compensation can be claimed under the British act, *supra* note 69, without notice to the landlord or his consent, relate to soil preservation. It is not suggested here that it would be advisable or constitutional to go further than the British statute does.

[129] See note 119, *supra*.

[130] Village of Euclid v. Ambler Realty Co., 272 U. S. 365 (1926).

[131] WIS. STAT. (1935) §59.97; Mich. Laws 1935, act 44, p. 70; Pa. Laws 1937, act 435 (rural counties), and Laws 1937, act 504 (rural townships).

[132] See REPORT OF LAND ENQUIRY COMMITTEE (Hodder and Stoughton, London, 1913) 362, quoted in Harris, *supra* note 112, at 15, 21.

[133] Harris, *supra* note 25, at 1-3, 10-22, 24-26; Harris, *supra* note 112, at 1-2.

[134] Harris, *supra* notes 112, 113; Harris, *supra* note 25, at 34-39; FARM TENANCY REPORT, 70-86.

It should be noted that a constitutional justification for a compensation statute under the theory here advanced exists only where the compensation, in the absence of consent by the landlord to the improvement, is for an improvement beneficial to the general public and where it is conceivable that the state could require the landlord to make the improvement at his own expense. A statute so drafted that it appeared that an effort was being made to favor the tenant as against his landlord with no public benefit being served, would be held invalid.

"(d) The tenant shall compensate the landlord for any deterioration or damage due to factors over which the tenant has control, and the landlord shall be empowered to prevent continuation of serious wastage";

The object of this recommendation is the same as the objectives of the existing law relating to good husbandry and waste, and since it is merely proposed to prevent the tenant from damaging the property of his landlord, no constitutional problems are presented by this recommendation. The weaknesses of the present law have already been considered, but if this compensation for deterioration is allowed as a set-off against claims for compensation for improvements and if the duties of the tenant are clearly defined by statute and an adequate injunctive remedy given the landlord, it may be that these weaknesses can be remedied.

"(e) Adequate records shall be kept of outlays for which either party will claim compensation";

This recommendation, which is self-explanatory, relates merely to an administrative provision which should be included in the compensation statutes and presents no problems either of constitutionality or of drafting.

"(f) Agricultural leases shall be terminable by either party only after due notice given at least six months in advance";

This recommendation would restore the rule of the common law[135] with regard to notice necessary to terminate the most usual type of agricultural tenancy, the tenancy from year to year, and extend its application to other types of agricultural tenancies. This requirement has now generally been reduced by statute to shorter periods.[136] There is no more doubt as to the constitutionality of a restoration of the

[135] The reasons for the common law rule are closely similar to those influencing the Committee. The rule's history and its basis in the public policy of encouraging the proper cultivation of the soil, and the complementary rule that agricultural tenancies should generally be construed as tenancies from year to year, are outlined in Stedman v. McIntosh, 26 N. C. 291 (1844), 42 Am. Dec. 122 and note.

[136] The present situation with regard to the various types of tenancy under which agricultural lands are usually held is, briefly, as follows:

Tenancy for term of years or for one year (with definite ending date): No notice is necessary to terminate at common law. Stedman v. McIntosh, *supra* note 135. Some statutes have codified this common law rule, as in Kansas, GEN. STAT. (1935) §67-509, applied to agricultural land in Tredick v. Birrer, 109 Kans. 488, 200 Pac. 272 (1921). Where notice is required, however, under KANS. GEN. STAT. (1935) §67-506, for agricultural lands, it must provide for termination on March 1. Notice, however, is required by some statutes before the statutory remedy for the landlord to take possession may be resorted to. MD. CODE (Bagby 1924) art. 53, §§1-8; Smith v. Pritchett, 168 Md. 347, 178 Atl. 113 (1935).

old rule than there is of the changes. Primarily, the pressure for shorter periods of notice comes from urban conditions, where the modern mobility of the population would make a six months' period for notice extremely inconvenient, but there is no reason why the rule should be uniform for both urban and rural tenancies. Since farming operations must be planned on an annual basis, it would seem desirable to require the parties to make their plans well in advance, and to allow ample time to make arrangements for the coming year if the tenant is to move. Such a provision might also tend to stabilize tenancy by obviating the threat of termination in minor disputes toward the end of the tenancy, as in the case of disputes over the division of the crop. Even without other reforms, this change would be beneficial since the tenant would know for the last half of his tenancy if he were to remain another year and, if remaining, be inclined to conserve the soil and make minor improvements on the farm.

"(g) After the first year payment shall be made for inconvenience or loss sustained by the other party by reason of the termination of the lease without due cause";

The effect of this proposal is to abolish the present right of landlords or tenants to end a tenancy at its termination, for any reason or for no reason, by the mere giving of the notice required by statute. The adoption of this principle of the sections of the British Agricultural Holdings Act providing for compensation for disturbance, will end the prevalence of annual tenure and eliminate the frequent moving of tenants.[137] This would, indeed, be a sweeping change in the present tenancy system and a direct attack on the many problems arising from the fact that American tenants move too frequently.

For a constitutional justification for this proposal, the peculiar power of the state to regulate the forms of land tenure must be relied upon. It must be remembered that once already in the history of this country a sweeping change has been made in the existing tenancy system because the change was thought socially desirable, although then it was felt that the prevailing leases were for too long rather than too short a period. The state's power to regulate agricultural leases was first used in New York in 1846, where the Constitutional Convention adopted a provision prohibiting the leasing of agricultural land for more than 12 years.[138] The courts recognized that the purpose of the provision was to benefit agriculture and approved

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Tenancy from year to year: Notice of six months required by common law, shortened by statute in some states. Some of the cases involving such leases are: Hauer v. Harkreader, 221 S. W. 813 (Mo. App. 1920); Tredick v. Birrer, *supra;* Peel v. Lane, 148 Ark. 79, 229 S. W. 20 (1921).

Tenancy at will: The common law required no notice in this type of tenancy, and hence the courts tend not to construe agricultural tenancies to be of this type, see note 135, *supra.* Statutes, however, require notice in some states, *e. g.,* in Georgia, where tenancies are presumed to be for the calendar year, though the parties may make express exceptions in this rule. In the case of a tenancy at will, two months' notice must be given by the landlord and one month's notice by the tenant, and the tenant's rights to emblements are secured. GA. CODE (Harrison, 1933) §§61-104—61-106.

[137] FARM TENANCY REPORT, 6-8, 49-50, 58-61, Table VII; Harris, *supra* note 25, at 18-22, and *supra* note 112, at 30-34.

[138] N. Y. CONST., Art. I, §13.

it. Thus, in *Stephens v. Reynolds*,[139] it was noted that the provision had been adopted to break up the existing large estates, because it was felt that tenants, having no assurance of permanent tenure or of compensation for their improvements, would not adopt the best mode of cultivation, and hence that the existing system was prejudicial to the interests of the state as a question of political economy. Statutes and constitutional provisions similar to the New York provisions were subsequently adopted in a number of other states, especially those western states which framed their constitutions after the New York Constitution was adopted. The validity of such regulations has seldom been doubted and where the question has arisen, the courts have contented themselves with citing the historical origin of the provision or relying upon the early New York cases.[140]

A similar statute prohibiting leases for a period of more than 20 years was also enacted in Alabama, and the Alabama court upheld the legislation upon the power of the state to regulate estates in land.[141] Maryland has adopted the system of permitting tenants to redeem leases for over 15 years by making certain cash payments to the landlord, although not prohibiting long leases absolutely.[142] This legislation was upheld shortly after its passage in *Stewart v. Gorter*,[143] and again attacked in the recent case of *Marburg v. Mercantile Building Co.*,[144] as violative of the Fourteenth Amendment to the Federal Constitution. While conceding that there were no United States Supreme Court decisions directly in point, the Maryland court upheld the legislation, despite its admitted interference with the natural right of the individual to contract concerning his own property, relying upon the general powers of the legislature to change or limit the character of estates and tenures and the widespread prevalence of such legislation.

In view of these decisions, it seems clear that the legislature has full power to regulate agricultural leases, both with regard to their duration and to other provisions in the interest of improving agriculture both from the standpoint of social conditions and from the standpoint of conserving soil resources.

While the remedy adopted in the situation discussed in these cases is completely different from that here proposed, it is noteworthy that the evil feared, neglect of farms by tenants, is the same that the proposal for compensation for disturbance is designed to meet and that the courts assert a sweeping power in the state to regulate the land tenure system to meet this evil. Under this doctrine not only compensation for disturbance, but compensation for improvements, is justified. While it was felt in 1846 that, if long tenures could be broken up, the land would be sold and pass to owner-operators, the result of the reform was merely to encourage short tenancies which accentuated the evil the statutes intended to prevent. Since this remedy has

[139] 6 N. Y. 454 (1852).
[140] Mass. National Bank v. Shinn, 163 N. Y. 360, 57 N. E. 611 (1900); Lerch v. Missoula Mercantile Co., 45 Mont. 314, 123 Pac. 25 (1912).
[141] Robertson v. Hayes, 83 Ala. 290, 3 So. 674 (1888).
[142] Md. Acts 1888, c. 395.
[143] 70 Md. 242, 16 Atl. 644 (1889).
[144] 154 Md. 438, 140 Atl. 836 (1928).

so signally failed, it would appear that these cases justify the state legislatures in adopting a new remedy which seems to have a reasonable chance of success of correcting the same evil.

"(h) The landlord's lien shall be limited during emergencies such as a serious crop failure or sudden fall of prices where rental payments are not based upon a sliding scale";

The object of this suggestion is to meet the same situation, in the case of the cash renter, that is automatically met by the system of renting on shares prevalent throughout the country. Where a landlord has a lien for a certain sum of money, in case of crop failure or sudden decline of prices, he may have to take all, or practically all, of the crop to secure his cash rent. For this reason, largely, tenants prefer the share system which makes the landlord share these risks. The effectiveness and constitutionality of the device of limiting the landlord's lien to satisfactory types of contracts has already been discussed in connection with existing Texas legislation.

"(i) Renting a farm on which the dwelling does not meet certain minimum housing and sanitary standards shall be a misdemeanor, though such requirements should be extremely moderate and limited to things primarily connected with health and sanitation, such as sanitary outside toilets, screens, tight roofs, and other reasonable stipulations";

Ample precedent for this reform may be found in statutes providing minimum standards for urban housing which have uniformly been upheld under the police power as measures designed to promote public health. While these urban statutes contain many provisions not applicable to rural conditions, many of them relating to the matters listed above are applicable. Since the constitutional test of legislation of this type is the relationship of the housing standard set up to the public health, the hardship or expense imposed upon the landlord is—in legal theory—immaterial.[145]

There are many progressive steps in rural housing, however, which, though they should be encouraged, are not sufficiently related to health to come within the precedent afforded by the urban housing legislation. For example, no one questions the desirability of rural electrification, but it would be difficult, if not impossible, to show that it is so related to health that landlords could be compelled to furnish electricity to farm tenants. As a practical matter, it would seem that no effort should be made to improve rural tenant housing by compulsory methods above the level of housing used by owner-operators generally in the locality. The assurance of permanence of tenure which other points of a program for reform of tenancy relationships

[145] Tenement House Dept. v. Moeschen, 179 N. Y. 325, 72 N. E. 231 (1904). A successful constitutional attack on such a statute would be based upon the contention that the requirement was not reasonably related to the public health, and particular regulations, upheld because of crowded urban conditions, might be unconstitutional if held unnecessary in uncrowded rural areas. In addition to the approach suggested above by the President's Committee, in drafting a statute it would be advisable to include provisions, such as those already discussed in existing legislation, requiring the landlord to furnish a habitable dwelling and allowing the tenant to make repairs and deduct their cost from his rent.

should include will enable tenants to make improvements in their homes above the standard necessary for good health.

"(j) Landlord and tenant differences shall be settled by local boards of arbitration composed of reasonable representatives of both landlords and tenants whose decisions shall be subject to court review where considerable sums of money or problems of legal interpretation are involved."

For many reasons the existing court procedure is unsatisfactory as a means of settling minor differences of landlords and tenants. The natural desire to stay out of court is often enough to prevent the use of court procedure to settle these. But the reforms proposed, if adopted, will cause disputes over valuations, even where the parties' rights are clear, and a simple method of settling them should be provided. Indeed, many of these matters should not be fought over but compromised or agreed upon. For this reason, the British act has provided the method for settling disputes by arbitration already discussed, and a group of expert arbiters competent to set agricultural valuations has grown up to administer this feature of the law.[146]

Subject to constitutional limitations to be discussed below on compulsory arbitration, the English system could be adopted by many states in this country. The Scottish system differs from the English in that a special Land Court has been established as part of the judicial system of the country.[147] Resort to such a system of specialized courts for landlord-tenant problems, following in many respects a procedure resembling arbitration, would be impossible here without amendments to state constitutions which usually specify the various courts and their jurisdiction.

No constitutional difficulties are presented by this proposal if the arbitration procedure is made a voluntary one to be entered by agreement. A judgment awarded in a voluntary arbitration may be enforced in court, and objections that this procedure ousts the courts of their jurisdiction, deprives a party of property without due process of law or infringes the constitutional right to a jury trial have been overruled under other arbitration statutes.[148] The Oklahoma legislation[149] already considered contains provisions for arbitration of this type.

Where the provision for arbitration is a compulsory one, however, the courts have agreed in holding it to be unconstitutional.[150] Consequently, it appears that the arbitration method must win its way because it affords a superior method of settling disputes. Where the right to appeal to the courts is preserved, however, and the arbitration procedure aids the courts by disposing of litigation but does not close the courts to litigants, the statutes are regarded as valid. The provisions for arbitration or administrative determination of claims in workmen's compensation

[146] Harris, *supra* note 112, at 43-47.

[147] Harris and Schepmos, *supra* note 113.

[148] White Eagle Laundry Co. v. Slawek, 296 Ill. 240, 129 N. E. 753 (1921); Berkovitz v. Arbib & Houlberg, 230 N. Y. 261, 130 N. E. 288 (1921); Ezell v. Rocky Mtn. Bean & Elevator Co., 76 Colo. 409, 232 Pac. 680 (1925).

[149] *Supra* note 43.

[150] Compulsory arbitration of rates of wages has been held invalid in Wolff Co. v. Industrial Court, *supra* note 133; Dorchy v. Kansas, 264 U. S. 286 (1924); and *In re* Compulsory Arbitration, 9 Colo. 629, 21 Pac. 474 (1886); *cf.* St. Louis I. M. & S. R. Co. v. Williams, 49 Ark. 492, 5 S. W. 883 (1887).

acts are based on this theory.[151] A tenant's compensation statute establishing new rights for tenants might well follow the procedure of the state workmen's compensation act, both in its provisions for initial administrative procedure for determining the amount due, and as to the scope of the constitutionally necessary judicial review. The local boards of arbitration could be given powers similar to those of the workmen's compensation commission and their decisions on questions of fact could be made equally conclusive.

Finally, if the state has the power to enact statutory forms of contracts, the provisions of which must be followed, as it has with regard to insurance policies, a clause providing for arbitration may be included in the compulsory provisions of the statutory contract where only the amount of loss is arbitrated and the legal question of liability under the law and contract is left to the courts.[152] If the device of statutory lease provisions is adopted, a provision for arbitration of this type could be included in the required provisions.

THE POSITION OF THE SHARE-CROPPER

There are large numbers of persons often loosely referred to as "tenants," especially in the southern states, who are not touched at all by the program outlined above because their legal status is that of the share-cropper; it is held that they are employees, not tenants; that they have no possession of the land but merely a right to enter the land to work on the crop, and statutes relating to tenants do not apply to them.[153] While the same individual may be a tenant one year and a share-cropper the next and never realize his change of status and while it is often difficult to determine just what is the status of any individual under the customary vague oral contract, nevertheless the legal difference in the positions of the cropper and the tenant is so great that it does not appear that the power of the state to regulate land tenure relationships justifies action with regard to the problems of the share-cropper. The only recommendation of the President's Committee for state action with regard to share-croppers is for action to safeguard their civil liberties,[154] although they are eligible for aid under the Bankhead-Jones Act.[155]

The state, however, does have certain limited powers to regulate employer-employee relationships, and the approach to the solution of the problems of the share-cropper must be made through this field of law. Present statutes relating to labor in general exclude agricultural labor,[156] but the decisions upholding such discriminations indicate that the distinction, though a reasonable one, is not a necessary one which the legislature must make for constitutional reasons or that the

[151] Deiberkis v. Link-Belt Co., 261 Ill. 454, 104 N. E. 211 (1914). The court here also relied on the fact that provisions of the workmen's compensation acts are elective.

[152] Dunton v. Westchester Fire Ins. Co., 104 Me. 372, 71 Atl. 1037 (1908); Glidden Co. v. Retail Hardware Mutual Fire Ins. Co., 181 Minn. 518, 233 N. W. 310, 77 A. L. R. 616 (1930), *aff'd* 284 U. S. 151 (1931).

[153] Book, *A Note on the Legal Status of Share-tenants and Share-croppers in the South, infra,* at p. 543.

[154] FARM TENANCY REPORT, 19. [155] *Supra* note 6.

[156] Ham, *The Status of Agricultural Labor, infra,* at p. 568.

peculiar problems of agricultural labor, including croppers, may not be met by appropriate legislation.

Any attempt, however, to improve the status of the farm tenant might be circumvented by landlords who adopted the policy of working their land by employing croppers rather than by leasing to tenants. This temptation would probably be strongest in the South, where the cropping system is well-established, but even in the states where it is now practically unknown, the courts have generally recognized it is possible to make such a contract if the parties intend to do so, and clearly express their intention. Consequently, any legislation designed to improve the status of tenants should contain provisions that no contract should be construed as a cropping contract but should be construed as a contract of tenancy and subject to the act, except in the situation where the cropping contract should properly exist, *i.e.*, where the person who works the farm supplies only his own labor and where the landlord supplies all machinery, fertilizer, and seed, and directs the farming operations.[157] While many landlords will cooperate with a program for improved tenancy relations and, indeed, many have already voluntarily adopted reforms such as those suggested here, it must be remembered that there are also landlords who will bitterly oppose any program for improving their tenants' condition and search for loopholes in tenancy laws through which they may evade these laws if their opposition to their enactment is unsuccessful.

[157] That the legal abolition of the status of landlord and cropper, as in Alabama, CODE (Michie, 1928) §8807, will not necessarily affect their economic and social status, see Book, *supra* note 153, at p. 542.

A NOTE ON THE LEGAL STATUS OF SHARE-TENANTS AND SHARE-CROPPERS IN THE SOUTH

A. B. Book*

The plight of the share-tenant and share-cropper has received attention from many sources in recent years and the terms have appeared often in the press, in literary publications, and in governmental regulations and documents. That the South possessed a social and economic share-cropping problem was well known to students of that area for many years, yet it required the impact of a world-wide depression and the resultant efforts of the New Deal, which became so uncomfortably involved in the problem through the operations of the Agricultural Adjustment Administration,[1] to bring to it some measure of public recognition. With all this, however, there has been no full treatment of the legal status of the share-tenant and share-cropper published.[2] The number of relevant cases and statutes is large, and this note can do no more than indicate their salient features.

Share-tenancy, that is the renting of lands for agricultural purposes with a share of the crop as the specified rent, exists throughout the United States. The cropper system, by which is meant the share cultivation of land under a contract by which the landowner retains control of the land and supplies all except the labor, prevails principally in the southern cotton and tobacco areas. This system had its origin in the adjustments made necessary by the abolition of slavery, particularly in the fact that the freed slave had neither the financial resources nor the education in self-reliance to enable him to earn an independent livelihood. Once established, the system continued of its own momentum and that of the system of excess charges for credit which immediately became a part of it and operated to deprive the cropper of from twenty to thirty percent of his share of the crop.

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[1] Bruton, *Cotton Acreage Reduction and the Tenant Farmer,* (June 1934) 1 LAW AND CONTEMPORARY PROBLEMS, 275.

[2] *Agricultural Bibliography No. 70, Farm Tenancy in the United States, 1918-1936,* published by the Bureau of Agricultural Economics, United States Department of Agriculture, contains one reference on the legal status of the share-cropper. This reference is to typewritten memoranda on the agricultural landlord-tenant problem in Alabama, Arkansas, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Texas prepared by the Agricultural Adjustment Administration in 1934, and made the basis of this paper.

The South's most important agricultural contract is the crop-share agreement by which the land of one person is cultivated by another on a share-of-the-crop basis. Under such contracts, the majority of them oral, some 1,500,000[3] share-tenants and share-croppers live and work, the agreement sometimes providing that the cropper not drink intoxicating liquors, use profane language or allow any idleness or loafing around the premises.[4] While there are any number of varieties of crop-share agreements, some of which are a combination of the crop-share agreement with a cash or fixed rent provision in regard to pasture land and land to be cultivated in a commodity other than the principal one, they are of two major types.[5] In accordance with one the landowner furnishes only the real estate, the operator furnishing the work-stock, equipment, seed and fertilizer, generally receiving one-fourth of the cotton crop and one-third of the grain crop produced. Such a tenant or cropper operating under this type of contract is often referred to as a fourth "renter" or as a third and fourth "renter." However, the use of the term "renter" is misleading because the cultivator may or may not be a renter or tenant in the technical sense, depending upon considerations which will be discussed later.

The other principal type of crop-share agreement is that under which the landowner supplies the work-stock and equipment, and possibly half of the seed and fertilizer, in addition to the land. This leaves to the operator the responsibility only for furnishing the labor and part, if not all, of the fertilizer and seed, the latter being "advanced" to the cultivator by the land-owner, to be paid for when the crop is harvested. Under these conditions the crop is divided between the parties on a fifty-fifty basis. This type of contract is usually held to have created a cropper relationship, but may be "interpreted," depending upon factors dealt with in succeeding paragraphs, as giving rise to a tenancy.

In examining into the tests by which it is determined whether a particular crop-share agreement created a tenancy or a cropper relationship, it must be remembered that, there being no standard form of either the share-rental or the share-cropping agreement, the ruling in a given case may have been influenced by provisions of the agreement not evidenced in the opinion and from which it might have been found that the parties "intended" one of the possibilities to the exclusion of the other.[6] It has been said that while no particular words are necessary to create the relation of landlord and tenant, it is indispensable that it should appear to have been the inten-

[3] The Census enumeration does not distinguish between the cash-, fixed-rent-, or share-tenant. The 1935 Census of Agriculture indicates that in 16 southern states there are 1,115,219 tenants and 716,256 croppers.

[4] Such were the additional restrictions in the agreement considered in State v. Sanders, 110 S. C. 487, 96 S. E. 622 (1918).

[5] For a further analysis of the usual provisions of such contracts, see Vance, *Human Factors in the South's Agricultural Readjustment* (June, 1934) 1 LAW AND CONTEMPORARY PROBLEMS, 259, 267.

[6] It is also possible in any case where the evidence of intent is not clear that the court may be influenced to place the transaction in one category or the other by a consideration of the results which will follow from its characterization of the transaction. In other words, what appears to be a preliminary to the decision of the specific issue before the court may in fact be only the consequence of a decision reached on other grounds not articulated in the opinion. This phenomenon is not unusual in the judicial process.

tion of one party to dispossess himself of the premises and of the other to occupy them.[7] Where the cultivator furnishes only the labor, apparently since the landowner has risked the safety and well-being of his equipment and work-stock, the courts have felt that there is a presumption that the parties intended a cropping-relationship. Where the landowner furnishes only the land, however, the contrary presumption does not arise and the courts have said that the intent of the parties is to be found in whether the agreement provides that the landowner receives his share "from" the cultivator or *vice versa*,[8] that "rent" is to be paid, or that the cultivator is subject to supervision by the landowner.

The crop-share cultivator who is considered a tenant proper has a legal estate in the land rented and the title to and possession of the crops grown.[9] The cropper, on the other hand, is generally held to have no estate in the land but only a right of ingress and egress for the purpose of cultivation, the crop belonging either to the parties as tenants in common or to the landowner alone. These basic differences between the rights of the share-tenant and share-cropper in the land they cultivate and the crops they produce, do not, however, make a great difference as between the parties themselves, except in the method and ease of enforcement of the landowner's claim, because the landowner has, by statute, been given a lien for the tenant's rent and for money and supplies advanced to the tenant or cropper during the year. In both situations there has been a tendency, by statute and judicial interpretation, to increase the security of the landowner at the expense of the share cultivator, treating the latter as of a class which would default in its obligations if the slightest opportunity existed.

Each of the southern states has enacted legislation giving the landlord a lien upon the crops produced as security for the rent and for money and supplies furnished to the tenant to make the crop.[10] Not only are the landlords who make advances to tenants protected by a statutory lien, but in North and South Carolina a similar lien, superior to all liens except the landlord's lien for rent and the laborer's lien for his services, has been given to all others who make advances for agricultural purposes.[11]

Various criminal provisions are also in force intended to regulate the landlord-tenant relationship. Many of these apply to the cropper situation as well. Thus, it

[7] Brown v. Johnson, 188 Tex. 143, 12 S. W. (2d) 543 (1929).

[8] Barnhardt v. State, 169 Ark. 567, 275 S. W. 909 (1925).

[9] Cry v. Bass Hardware Co., 273 S. W. 347 (Tex. Civ. App. 1925): Schlicht v. Callicott, 76 Miss. 487, 24 So. 869 (1899); Alexander v. Zeigler, 84 Miss. 560, 36 So. 536 (1904); Hardeman v. Arthurs, 144 Ark. 289, 222 S. W. 20 (1920); Barnhardt v. State, 169 Ark. 567, 275 S. W. 909 (1925); Schoenlau-Steiner Trunk Co. v. Hilderbrand, 152 Tenn. 166, 274 S. W. 544 (1925); Taylor v. Coney, 101 Ga. 655, 28 S. E. 974 (1897); Fields v. Argo, 103 Ga. 387, 30 S. E. 29 (1898); Souter v. Cravy, 29 Ga. App. 557, 116 S. E. 231 (1923); Brock v. Haley & Co., 88 S. C. 373, 70 S. E. 1011 (1911).

[10] ARK. DIG. STAT. (Crawford & Moses, 1921) §§6889, 6890; ALA. CODE (Michie, 1928) §§8872, 8873; GA. CODE (1926) §§3340, 3348; MISS. CODE (1930) §§2186, 2187, 2188; N. C. CODE (Michie, 1935) §2355; S. C. CODE (1932) §8771; TENN. CODE (Williams, Shannon & Harsh, 1932) §§8017-19; TEX. COMP. STAT. (1928) art. 5222.

[11] N. C. CODE (Michie, 1935) §2480; S. C. CODE (1932) §8779.

is a misdemeanor to dispose of or to conceal any part of a crop subject to a landlord's lien, provided, of course, that it is found that there existed an intent to deprive the lienor of his security.[12] It is further made a misdemeanor to entice away or knowingly employ a tenant or cropper or to otherwise interfere with the tenant or cropper relationship prior to the expiration of the term,[13] or to buy or sell cotton between the hours from sunset to sunrise.[14] And in North Carolina it is made a misdemeanor to buy or sell seed cotton in a quantity less than that which is usually baled, unless the purchaser keeps complete records, open to public inspection, of such transactions.[15] The purpose of all these provisions, of course, is to make it difficult for tenants and croppers to defraud the landlord of their share of the crop.

Alabama and North Carolina have, by statutory enactment, abandoned the legal distinction between share-tenants and share-croppers. The method used by these states differs materially. In Alabama the statute provides that where one party furnishes the land and the other the labor to cultivate it, the crop to be divided, the relation of landlord and tenant with all its incidents shall be held to exist regardless of which of the parties furnishes the teams, feed, and fertilizer.[16] The statute has apparently not affected their economic and social status, and it may be noted that the Agricultural Census of 1935 nevertheless indicates that there are 77,974 croppers in Alabama.

In North Carolina, under the statute of 1876-77, the cropper and tenant occupy the same position as far as ownership of the crop is concerned. While the statute lessened the tenant's rights in the crop by increasing the landlord's rights as a lienholder,[17] it at the same time raised the cropper's status from that of a laborer receiving pay in a share of the crop with title to the crop vested in the landowner, to that of one having a right to actual possession subject to the landowner's lien.[18] The statute declares that any crops raised by a tenant or cropper are vested in possession of the landlord until the rents and advancements are paid and that "this lien shall

[12] ARK. DIG. STAT. §§2552, 2553 (the latter section deals with those aiding and abetting); GA. CODE §729; MISS. CODE §§1018-1020; N. C. CODE §4288; S. C. CODE §1276; TENN. CODE §8025, 11265-11266; TEX. COMP. STAT. art. 5225, 5226.

[13] ARK. DIG. STAT. §2789, (penalty of a fine from $25 to $100 and liability to landowner for advances he made and damages sustained); GA. CODE §§123-25, 3712; MISS. CODE §900.

[14] ARK. DIG. STAT. §2439; GA. CODE §555; MISS. CODE §838; N. C. CODE §4467; S. C. CODE §6391; TENN. CODE §§11260-63.

[15] N. C. CODE (Michie, 1931) §5083.

[16] ALA. CODE (Michie, 1928) §8807: "When one party furnishes the land and the other party furnishes the labor to cultivate it, with stipulation, express or implied, to divide the crop between them in certain proportions, the relation of landlord and tenant, with all its incidents, and to all intents and purposes, shall be held to exist between them; and the portion of the crop to which the party funishing the land is entitled shall be held and treated as the rent of the land; and this shall be true whether or not by express agreement or by implication the party furnishing the land is to furnish all or a portion of the teams to cultivate it, all or a portion of the feed for the teams, all or a portion of the planting seed, all or a portion of the fertilizer to be used on the crop, or pay for putting in marketable condition his proportion of the crop after the same has been harvested by the tenant."

[17] See Howland v. Forlaw, 108 N. C. 567, 13 S. E. 173 (1891), and cases cited as to rights of tenants prior to the statute.

[18] See State v. Austin, 123 N. C. 749, 31 S. E. 731 (1898) as to status of cropper prior to the statute.

be preferred to all other liens."[19] It is to be noted that the statute applies only where it is not otherwise agreed between the parties. No case has reached the appellate court where an agreement providing for a lien contrary to that in the statute was a point at issue.

In interpreting the statute the North Carolina Supreme Court has, correctly it would seem, treated the statute as one primarily and solely designed to secure the landowner in his rent and advances and has held that he is a "trustee in (constructive) possession" until the debts are paid and that he acquired no title to the tenant's share.[20] In so doing the court has pointed out that while the first section vests possession of the crop in the landlord, the second section recognizes the actual possession in the lessee or cropper until the division or surrender of the crop to the landowner.[21]

Where the distinction between share-tenant and cropper has not been so affected by statute, the cropper is said to be an employee, the crops belonging either to the cropper and landowner as tenants in common or to the landowner alone, subject to the cropper's lien as a laborer for his share after division and deduction for advances made to him during the year. The holding that the parties to a cropping agreement are tenants in common appears well established in Texas, Tennessee, and Mississippi.[22] The cropper can therefore maintain an action for partition of the crop, can recover for conversion, can interplead for his share of the cotton grown and may mortgage or sell his share of the crop which his labor produced.[23] Where the cropper brings action for conversion of a crop which he was unable to complete because of a wrongful ejectment, the value of his share, without deduction of the cost of harvesting and selling, may be recovered.[24] If the action be one for breach of contract, as where the landowner failed to furnish sufficient money with which to

[19] N. C. CODE (Michie, 1931) §2355, provides that: "When lands are rented or leased by agreement, written or oral, for agricultural purposes, or are cultivated by a cropper, unless otherwise agreed between the parties to the lease or agreement, any and all crops raised on said lands shall be deemed and held to be vested in possession of the lessor or his assigns at all times, until the rents for said lands are paid and until all the stipulations contained in the lease or agreement are performed, or damages in lieu thereof paid to the lessor or his assigns, and until said party or his assigns is paid for all advancements made and expenses incurred in making and saving said crops. A landlord to entitle himself to the benefit of the lien herein provided for, must conform as to the prices charged for the advance to the provisions of the article Agricultural Liens, in the chapter Liens.

"This lien shall be preferred to all other liens, and the lessor or his assigns is entitled, against the lessee or cropper, or the assigns of either, who removes the crop or any part thereof from the lands without the consent of the lessor or his assigns, or against any other person who may get possession of said crop or any part thereof, to the remedies given in an action upon a claim for the delivery of personal property. . . ."

[20] *Cf.* Batts v. Sullivan, 182 N. C. 129, 108 S. E. 511 (1921) where it was said that "possession and title" to all crops are deemed to be vested in the landlord.

[21] State v. Copeland, 86 N. C. 691 (1882); Tobacco Growers Ass'n v. Bissett, 187 N. C. 180, 121 S. E. 446 (1924).

[22] Tignor v. Toney, 13 Tex. Civ. App. 518, 35 S. W. 881 (1896); Doty v. Heth, 52 Miss. 530 (1876); Staple Cotton Co-op. Ass'n v. Hemphill, 142 Miss. 298, 107 So. 24 (1926); Mann v. Taylor, Executrix, 52 Tenn. 267 (1871); Hunt v. Wing, 57 Tenn. 139 (1872).

[23] Fagan v. Vogt, 36 Tex. Civ. App. 528, 80 S. W. 664 (1904); Barnett v. Govan, 241 S. W. 276 (Tex. Civ. App., 1922); Hunt v. Wing, 57 Tenn. 139 (1872); Jones v. Chamberlin, 52 Tenn. 211 (1871).

[24] Fagan v. Vogt, *supra* note 23.

make the crop, the measure of damages is the value of the share less necessary expenditures, not including labor, and less such sums as the cropper may have earned in other employment.[25]

In Texas it has been held that the statutory lien given a landlord for rent, money and the value of equipment furnished does not apply where the relationship of landowner and cropper is established. While it was indicated in two cases[26] that this followed because the parties were tenants in common of the crop produced, consideration must be given to the fact that the statute applies to persons "renting or leasing" lands and refers to the lien as being upon the property of the "tenant." The statute also grants a lien for money and supplies advanced in those cases where the landowner furnishes everything except the labor and the "tenant" furnishes the labor.[27] In the only cases decided under this provision the cultivator was a "third and fourth renter" and had given a note acknowledging the existence of a lien to secure the payment.[28]

The Mississippi statute providing for a landlord's lien on the crops produced by his tenant is similar to that of Texas. Special protection is granted to the tenant, however, where distress or seizure and sale is made where no rent or sum for supplies is due, in the provision that the tenant may in such case recover double the value of the property taken.[29] Although no case has been found on the point, it would seem that the statute applies only where the relationship is that of landlord and tenant. Another section of the statute does, however, specifically give the landowner a lien on the cropper's share of the crop for the money and "fair market value" of other things advanced by him or by another at his request, and grants a corresponding lien for wages on the interest of the employer in favor of "every employee, laborer, cropper, part owner, overseer or manager or other person" who aids in the cultivation or harvesting of any crop.[30] The landowners' statutory lien for supplies has been passed upon in one case,[31] but no cases were found in which the cropper's or part owner's lien was being asserted.

Tennessee statutes also give the landlord a lien for rent on all crops grown on the land and a lien for money, supplies, equipment advanced to or used by his tenant or share-cropper. It is further provided that it is the intention of the statute to treat the portion of the crop "reserved as rent by the landlord of a share-cropper" as vested in the landlord, unless the contract expressly provides otherwise.[32] The share-cropper also has a lien on the product of his labor under a section of the code which has not been reviewed by the appellate court.[33]

The rule that the share-cropper is an employee with no title to the crop until

[25] Matthews v. Foster, 238 S. W. 317 (Tex. Civ. App. 1922).
[26] Rosser v. Cole, 226 S. W. 510 (Tex. Civ. App., 1921); Brown v. Johnson, *supra* note 7.
[27] TEX. COMP. STAT. (1928) art. 5222.
[28] Spurlock v. Hilburn, 32 S. W. (2d) 396 (Tex. Civ. App. 1930).
[29] MISS. CODE (1930) §2218.
[30] *Supra* note 29, §2238.
[31] Betts v. Ratliff, 50 Miss. 561 (1874).
[32] TENN. CODE (1932) §8027.
[33] *Supra* note 32, §8014-16.

after there has been actual division and the landowner has received his share and full payment for advances is followed in Arkansas,[34] South Carolina and Georgia.[35] In the latter state statutory enactment defines a cropper as one employed to work part of a crop and specifically provides that the title to and right to control and possess the crop grown is vested in the landowner until he has received his share and is fully paid for all advances made to the cropper during that year.[36] It was therefore held that a cropper is guilty of larceny who disposes of the crop raised before settlement has been had with landowner.[37]

The cropper does, however, have some interest in the crop prior to its division. He may, for example, mortgage his interest in the crop, but such a mortgage may not be foreclosed until the cropper's interest has ripened into a title by the satisfaction of the debt owed to the landowner.[38] As against the interest of the landowner, therefore, the cropper's interest is quite clearly secondary, although the cropper does have, as a laborer, a statutory lien on the crops which his labor produces,[39] and before being permitted to foreclose his lien the cropper must show full performance of his contract or that such performance was rendered impossible by the unauthorized acts and conduct of the landowner.[40] Where the cropper attempts to assert his rights as against the landowner he is further impeded by the system of advances on credit. Since usually the landowner alone keeps a record of advances, he could easily show, if his intent were fraudulent, that the cropper had no equity in the crop over the former's share and payment for the supplies advanced to the latter. This situation is probably corrected very little by such legislation as exists in South Carolina, under which the cropper may insist upon a division of the crop by a disinterested person chosen by the parties or selected by the nearest magistrate.[41]

[34] In several cases the Arkansas court has held the landowner and cropper to be tenants in common in the crop, but it is doubtful that this can be called the general rule. In several of the cases holding that the landowner had title, he had retained title to the crop by the terms of the contract. Ponder v. Rhea, 32 Ark. 435 (1877); Sentell v. Moore, 34 Ark. 687 (1879); Valentine v. Edwards, 112 Ark. 354, 166 S. W. 531 (1914). In Tinsley v. Craige, 54 Ark. 346, 15 S. W. 897 (1891), the court, while holding that the landowner and cropper in the case before it were tenants in common, laid down the general rule that the landowner had title to the crop of his share-cropper, stating that "In former decisions of this court, where stress has been laid on the fact that the land-owner and occupant were tenants in common of the crop, it was to distinguish their title to or interest in the crop from the ordinary incidents of ownership that exist as between landlord and tenant and land-owner and cropper, in order to determine the remedies of the parties in suits about the crop, or to ascertain their respective interests in it, and not for the purpose of determining their relation to each other."

[35] People's Bank v. Walker, 132 S. C. 254, 128 S. E. 715 (1925), and cases there cited; Fountain v. Fountain, 10 Ga. App. 758, 73 S. E. 1096 (1912); Souter v. Cravy, 116 S. E. 231 (Ga. App. 1923), in which the court said: "It is possible, however, for a contract of landlord and tenant to be entered upon whereby the person renting and taking over the land is to pay therefor a certain fixed proportion of the crops. . . ."

[36] GA. CODE (1926) §3705.

[37] State v. Sanders, 110 S. C. 487, 96 S. E. 622 (1918).

[38] Fountain v. Fountain, 10 Ga. App. 758, 73 S. E. 1096 (1912); Parkes v. Webb, 48 Ark. 293, 3 S. W. 521 (1887); Malcolm Mercantile Co. v. Britt, 102 S. C. 499, 87 S. E. 143 (1915); Miller v. Ins. Co., 146 S. C. 123, 143 S. E. 663 (1928).

[39] §3335, GA. CODE (1926); §8772, S. C. CODE (1932); §6848, ARK. DIG. STAT. (1921). See also McElmurray v. Turner, 86 Ga. 215, 12 S. E. 359 (1890); Howard v. Franklin, 124 S. E. 554 (Ga. App. 1924); Birt v. Greene & Co., 127 S. C. 70, 120 S. E. 747 (1924); Burgie v. Davis, 34 Ark. 179 (1879).

[40] Payne v. Trammell, 29 Ga. App. 475, 115 S. E. 923 (1923).

[41] S. C. CODE (1932) §7031.

TAXATION IN AID OF FARM SECURITY

RUSSELL J. HINCKLEY* AND JOHN J. HAGGERTY**

Recent concern over insecurity of farm tenure and related conditions has given rise to proposals for adoption of various tax devices or modifications of the property tax system, of themselves, or supplementary to more direct measures, to aid in the promotion of farm security. These proposals have usually implied some form of differential taxation to favor the resident owner-operator and the small holding, or to penalize the absentee owner and the large holding. Others are designed to curb speculative land holdings or transactions. The usual premises are (1) that tenancy *per se* is undesirable and (2) that real estate tax burdens, absentee ownership, large holdings, and land speculation are prominent among the forces which tend to prevent the residents and operators from owning their homes and their farms. Without attempting to explore the validity of these premises, this article is intended to consider certain tax devices which have been proposed with particular regard to their possible effectiveness in accomplishing the desired end, namely, owner-operation of family-size farms, and their potential effects in other directions.

It should be recognized that the general problem of encouraging farm ownership by operators has two distinct phases, *i.e.,* maintaining *present* ownership against the various forces of reversion, and promoting the step from tenancy to ownership for those who have not been able to achieve it. The same tax measures may not serve both purposes or, as will be subsequently shown, measures designed to serve the one may actually impede the other.

Differential taxation usually implies either preferential treatment in taxation favorable to some class of property, type of industry, or direction of development which it is considered desirable to encourage, or discriminatory taxation against some class of property, industry, or development which public policy sets out to discourage. In either case, the concept of differential taxation presumes a classification of property, through the use of which will result a difference in the effective rate of taxation on the property being considered relative to other classes of property. The

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effective rate of taxation, for example, may be made to differ from the nominal tax rate by variations in the method or level of assessment of different classes of property to which the nominal rate applies. In the process of securing preferential tax treatment for owner-operated family-size farms, a necessary prerequisite would obviously be a classification of property designed to differentiate the homestead from other real property holdings. This classification, as will be subsequently shown, can be established in most states only by statute, and in about half the states only by constitutional amendment.[1] The classification law must necessarily define the homestead in terms of owner-occupancy and size of holding, the latter to be expressed in dollars of valuation, or acreage, or both.[2] The legal question raised by the regulatory aspects of such classification will be subsequently discussed.

[1] According to the National Industrial Conference Board, STATE AND LOCAL TAXATION OF PROPERTY (1930) 395, 17 states had constitutional provisions requiring uniformity; 5 had no requirement, but some degree of classification was permitted by judicial interpretation; 10 had constitutional provisions permitting classification with restrictions as to types of property, and 16 permitted it without restriction. Those with provisions *requiring* uniformity were: Arkansas, Georgia, Illinois, Indiana, Mississippi, Missouri, Nevada, North Carolina, New Hampshire, Ohio (as to real estate), South Carolina, Tennessee, Texas, Utah, Washington, West Virginia, Wyoming. Since that date, however, Arkansas, Texas, Utah, West Virginia, Georgia, and North Carolina have permitted homestead exemption by specific amendment. Georgia by amendment also permitted classification into tangible and two or more classes of intangible including money and adoption of different rates for different classes. North Carolina adopted an amendment permitting much broader classification. Mississippi and Wyoming enacted homestead exemption laws. The sixteen states whose constitutions permit classification without restriction were: Arizona, Colorado, Delaware, Idaho, Iowa, Kentucky, Louisiana, Minnesota, Montana, New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia. The five permitting classification by judicial interpretation were: Connecticut, Alabama, New York, Rhode Island, and Vermont. The ten with constitutional provisions permitting classification with restriction were: California (limited to enumerated intangibles); Florida; Kansas (limited to minerals and mining products; Maine (limited to intangibles); Maryland; Massachusetts (limited to forests); Michigan (rate must be equivalent to average rate on other property based on *ad valorem* basis); Nebraska; New Mexico; Wisconsin (no power to exempt any class). Since 1930, Florida has permitted homestead exemption by constitutional amendment.

[2] The differential treatment desired, assuming the basis of classification set forth above, might be secured by any one or a combination of the following several methods:

First, by the adoption of differential rates of taxation for different classes of property and the assessment of such property at true value or at a uniform percentage of true value. This method of securing differential taxation is necessarily statutory in origin and, if inconsistent with the constitution of the state in which adopted, it will be declared illegal by the courts.

Second, by the adoption of fractional assessments varying with different classes of property to which a uniform *ad valorem* rate is applied. Undervaluation *per se* is not classification. In order to constitute classification the rates of assessment must vary with the classes and must be uniform within each class of property. A common motive for the adoption of varying assessments has been the hope that constitutional requirements of uniformity in rates may be evaded through the application of uniform rates to varying assessments.

Third, by adoption of assessments at fixed amounts which represent varying percentages of the true value of the different classes of property, and the application to these fixed assessments of uniform *ad valorem* rates. This device has been used in a number of states to relieve from taxation young stock, non-productive personality, and types of property easily concealable and therefore not likely to be assessed unless accorded preferential treatment.

Fourth, by the adoption of varying assessment methods for different classes of property through the application of which varying percentages of true value are arrived at in the assessment process. This procedure is usually extra-legal rather than statutory in origin, though it may result from assessment of certain property by the state (as in the case of utilities) and other property by local assessors. The application of uniform rates to the varying percentages of true value would obviously result in differences in the effective rates of taxation.

Fifth, by the adoption of varying, partial, or qualified exemptions which would cause different per-

It should be recognized that the concept of differential taxation is not new in tax theory or practice. It has always been the practice of governments to exempt some property from taxation. In colonial days exemptions and other forms of preferential treatment were more prevalent than today. In the movement for uniform and universal taxation of property throughout the nineteenth century, many preferences and exemptions disappeared. That movement having apparently run its course, the demand for exemptions has again become insistent, and there is an increasing "nibbling away" of the tax base through exemptions granted for a great variety of reasons.[3]

RECENT HOMESTEAD EXEMPTION MEASURES

During the past four years, there has been a wave of agitation throughout the country for exemption of all or part of the assessed valuation of legal homesteads from taxation.[4] Exemption measures have been defended mainly on the ground of assisting in the maintenance of present small home and farm ownership against tax reversion, mortgage foreclosure, or other forces contributing to insecurity. The movement is also connected with general efforts toward property tax relief, the particular adjustment contemplated being to modify the tax in conformity to ability to pay, and to counteract tendencies toward regressive assessment of small properties. The exemption device has also been put forward as a measure to *promote* new ownership and construction.

Legislatures in at least thirty, if not all, of the states have had bills or resolutions introduced on the subject. Permissive measures have been enacted, or laws are in actual operation, in at least fifteen states. Several new measures are to be submitted to voters in the 1938 elections.

Definition of the homestead becomes a matter of considerable administrative importance. The definition accepted may be that given by the state constitution for judicial purposes or that set up specifically by the legislature in the act. The usual general provisions of exemption laws are that: (1) the taxpayer seeking exemption shall be a citizen and resident of the state; (2) he shall own and occupy the property in question; (3) the property shall come within the constitutional or statutory concept of a homestead; and (4) exemption from property taxes shall not include special assessment or improvement liens, nor, very frequently, debt service levies on prior

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centages of true value to be taxed at the regular uniform *ad valorem* rates. These exemptions may vary in time, in amount, or in elements of property exempted, as where a portion rather than the whole of a class is exempt, or they may free certain property from given taxes to which other holdings are subject.

Sixth, preference may be granted in other ways, as in the case of Nebraska in the years following 1911, during which mortgages were taxed as an interest in the land, while the value of the mortgage was deducted from the assessment of the land. Unanticipated repercussions led to the subsequent abandonment of this policy.

See LELAND, THE CLASSIFIED PROPERTY TAX IN THE UNITED STATES (1928) c. 2, *passim*.

[3] JENSEN, PROPERTY TAXATION IN THE UNITED STATES (1931) 125.

[4] May, *Status of Homestead Exemption in the United States* (May 1937) 13 J. OF LAND AND PUB. UT. ECON. 130.

debt in order that bondholders' contracts not be impaired.[4a] Too frequently, the statutory definition of homestead is loosely drawn, permitting, under actual local administration, more widespread extension of exemption than originally contemplated.[5] Obscure definition has also occasioned, in a number of instances, a series of judicial decisions, until a body of interpretation is developed.

Florida, by constitutional amendment[6] adopted in November 1934, exempts from all taxation, other than special assessments, all homesteads up to the valuation of $5000. However, the State Supreme Court has held that homesteads cannot be exempted from taxes for debt outstanding prior to enactment of the law, nor issues refunding such debt.[7] New homes would likewise be subject to taxes for retirement of indebtedness as such buildings become attached to the land and the value of land and buildings is combined into one assessment for tax purposes. The Florida amendment is mandatory and self-executing, not a mere enabling act such as that passed in Oklahoma and certain other states. It represents the most liberal exemption measure of this type passed to date.

Louisiana likewise adopted a homestead exemption amendment in 1934 which provides only partial and contingent exemption.[8] Exemption is extended from state, parish, and special taxes to homesteads not exceeding 160 acres and the buildings and appurtenances, whether rural or urban, owned and occupied by every head of family or person with dependents, to a value of $2000. This exemption does not extend to municipal or city taxes, (with one exception[9]). Moreover, homestead exemption

[4a] The latter point has commonly been made in the courts rather than in the laws.

[5] In Florida, the law requires that the recipient of exemption (rural homesteads not more than 160 acres, urban homes not more than one-half acre, exemption not to exceed $5,000 in assessed value) be head of a family, a citizen and resident of Florida, use the property for a permanent home, and possess a legal or beneficial title in equity to property located in the state. Fla. Laws 1935, c. 17060. The Florida law apparently makes it possible for owners of houses now rented to obtain homestead status for the property by substituting purchase contracts. Under present conditions, a large portion of residential property and much small hotel, apartment, and business property could become eligible for the $5,000 exemption, including many not actually occupied by owners, occupied in part, or only for a temporary period.

The Mississippi law, Miss. Laws 1934, c. 191, attempts to be more explicit on many points. The taxpayer seeking relief must be head of a family, resident of the state, hold fee simple title or life estate to the property claimed as legal homestead. In certain cases, a lease of school lands will satisfy ownership requirements of the law. No part of the building located on the homestead may be used for business purposes except that the owner may rent not more than five rooms in the dwelling to tenants or boarders. Where there are apartment buildings consisting of two or more separate apartments, only the portion occupied by the owner may be included in the homestead. Not more than one exemption is permitted on one building, or buildings with a common owner or owners. In municipalities the exemption is confined to contiguous and adjoining lots on the same street. If the homestead is less than 100 acres and under $2,500 in assessed value, the head of a family claiming exemption is permitted to select an additional tract or tracts nearest that on which the dwelling is located, as long as the total area is less than 160 acres, and valuation under $2,500. Only one homestead is permitted to a family group. If the dwelling is destroyed by fire, storm, etc., and the owner must move temporarily to another place, his right of exemption continues for one year after the event.

[6] FLA. CONST., Art. X, §7.

[7] Boatright v. Jacksonville, 117 Fla. 477, 158 So. 42 (1934).

[8] LA. CONST., Art. X, §4, approved Nov. 6, 1934; La. Acts 1934, No. 78.

[9] Orleans Parish, in which the City of New Orleans is located. In this parish exemption applies to state, general city, school, levee, and levee board taxes.

from parish or special taxes would not be extended in an amount greater than the funds available in the "Property Tax Relief Fund," to reimburse the state and subdivisions for tax losses entailed by the exemption.

In Minnesota, the principle of *de facto* exemption of homesteads, through the process of classification of property for taxation, was adopted by the 1933 legislature.[10] The law provides that assessments on rural homesteads shall not exceed 20% for the first $4000 of full and true value, while additional value above this amount and all other rural real estate are taxed (as previously) on 33-⅓% of full value. Urban homesteads are taxed on 25% of full and true value up to $4000, while any additional value and all other urban realty is assessed (as previously) at 40% of true value. Under this law the favor accorded homesteads by classification is tantamount to a limited exemption. Rural homesteads are accorded greater favor than urban. The State Supreme Court ruled that there was no violation of the uniformity clause of the constitution since the taxes are uniform on the same class of subjects.[11]

The 1934 legislature of the State of Mississippi enacted a law exempting from state *ad valorem* taxes only, homes up to $1000 in assessed value, provided the homestead did not exceed 40 acres in extent.[12] The claimant taxpayer must be head of a family and a resident of the state. In 1935, the law was amended as described previously, to increase the maximum exemption to $2500 and the limit on size to 160 acres.[13]

Texas voters in 1933 approved an amendment providing exemption of resident homesteads not exceeding 200 acres in extent from state taxes on the first $3000 of assessed valuation.[14]

West Virginia in 1932 granted some preference to homesteads through classification and a series of property tax limitations. Although the chief purpose of this amendment was to reduce the burden of the general property tax, one of its incidental purposes and effects was to discriminate in favor of all agricultural property, whether occupied by owner or tenant and residential property owned by the occupants. The rate limit on "property owned, used, and occupied by the owner exclusively for residential purposes" and "farms . . . occupied and cultivated by their owners or bona fide tenants" was fixed at $1.00 per $100 assessed value. Other real property, however, may, under the terms of this amendment, be taxed up to limits of $1.50 or $2.00, depending upon whether it is situated within or without an incorporated municipality.[15]

Arkansas, at the election of November 6, 1936, approved the exemption of resident homesteads (actually occupied by the owner) from state taxes up to $1000 assessed

[10] Minn. Laws 1933, c. 359.
[11] Apartment Operators' Ass'n v. Minneapolis, 191 Minn. 365, 254 N. W. 443 (1934).
[12] Miss. Laws 1934, c. 191.
[13] Miss. Laws 1935, c. 22.
[14] Texas Const., Art. VIII, §1-a.
[15] For text of this amendment, see W. Va. Laws 1932, Ex. Sess., c. 9. South Dakota also exempted homesteads from all taxation for *state* purposes (S. D. Laws 1937, c. 209), although the state does not now levy a property tax.

valuation. The legislature was authorized to fix the amount of exemption from time to time between a $2500 maximum and a $1000 minimum. It was charged, however, with the duty of enacting the necessary legislation and of replacing any funds affected, but not of enacting any new form of tax. Bondholders' rights were to be protected.[16]

At the general election on November 3, 1936, Utah ratified an amendment providing that the legislature may make provisions for exemption of homes, homesteads and personal property, not to exceed $2000 in value of homes and homesteads, and $300 for personal property.[17]

North Carolina at the November 1936 election ratified a homestead exemption amendment providing that the General Assembly *may* exempt from taxation not exceeding $1000 of value of property held and used as a place of residence of the owner.[18] The wording of the amendment would quite apparently not exempt homes occupied by tenants or renters.

In September 1935, the people of Oklahoma decided to amend the constitution by initiated petition to provide for homestead exemption. The ratified plan (petition) charged the legislature with the duty of defining a homestead and determining the maximum exemption. Once determined, the law may not be changed for twenty years, except to raise the amount of exemption.[19]

On June 8, 1937, the Georgia electorate adopted a constitutional amendment exempting resident homesteads (actually occupied by the owner) up to a value of $2000 from all *ad valorem* taxes and reserved the right in the General Assembly to lower it to $1250.[20] The effective date was not specified.

Iowa provided that the balance of proceeds of the personal net income tax, the business tax on corporations, and the retail sales tax (after allocating 3% to the Old Age Pension Fund and $500,000 to the Emergency Relief Fund) should be held as a homestead exemption credit fund, apportioned each year to give credit against the tax on each eligible homestead in the state in the proportion which the assessed valuation of the homestead bears to the assessed valuation of all eligible homesteads in the state in amount not to exceed $2500 each.[21]

Wyoming and Alabama also enacted statutes extending homestead exemption in

[16] For the text of this amendment, see Ark. Laws 1937, Act. No. 247.

[17] For the text of this amendment, see Utah Laws 1935, p. 257 (permissive only).

[18] For text of this amendment, see N. C. Pub. Laws 1935, p. 745 (permissive only). The legislature would not be required to grant the full $1,000 exemption. It could grant an exemption of lesser amount or none at all. At this same election, an amendment of broader terms was ratified *permitting* classification of property and the levying of different tax rates or applying different scales of valuation to each class. In 1937 the state legislature considered and rejected a bill providing for a $300 exemption.

[19] For text of this amendment, see Okla. Laws 1935, p. 399. In 1937 a measure was adopted exempting one acre urban, 160 acres rural, up to $1000 valuation. Okla. Laws 1937 (Ex. Sess.) H. B. 3.

[20] For text of this amendment, see Ga. Laws 1937, p. 1122.

[21] Iowa Laws 1933, H. F. 1, as amended by Iowa Laws 1937, S. F. 84. A homestead is defined as "a small plot of land with a home in which the owner lives." One-half acre is the maximum size in the city or town, maximum assessed valuation being $2,500, and 40 acres the maximum in rural areas. The exemption does not apply to taxes in excess of 25 mills.

1937.[21a] Wyoming exempts resident homesteads from state and local taxes up to $500 valuation, revenue losses to be replaced by a homestead property exemption fund. Alabama provided that exemption should not exceed $2000 assessed valuation of every homestead as defined by constitution and laws, area not to exceed 160 acres.

APPRAISAL OF HOMESTEAD EXEMPTION

Local governments derive the greater part of their revenues from taxes on general property. Any major change in the property tax system would have far-reaching effects upon state and local governmental revenue systems. Among the practical aspects of homestead exemption or other devices for preferential taxation of homesteads is the general question of effects upon local governmental finance and services. More specifically, would the individual benefits derived be sufficiently great to justify a serious disturbance of present financial arrangements? Secondly, what is the likelihood that the tax preference granted homesteads might not fall back upon the home owner in the form of reductions of essential services, or in other, indirect taxes?

Estimates of the reduction in tax base and tax revenues by homestead exemption measures have been made in a number of instances.[22] In Alabama, it was found that in one county an exemption of $2000 of true value would reduce assessable property values for state, county, and school purposes 16%.[23] The Florida League of Municipalities estimated[24] that the $5000 exemption measure adopted in 1934 would remove from the tax rolls about 15% of the full value of taxable property in the state. In Georgia, a proposed exemption of $5000 was estimated as holding possibility of reducing present assessed values one-third. About 93% of the total value of farm property was shown to be made up of parcels valued at $5000 or less.[25] A proposed Montana exemption up to $2500 assessed value was viewed as threatening a loss of 40 to 60% in assessed values of certain counties and 40 to 75% in many cities. In about 1000 school districts (one-half the school districts of the state), such a measure would reduce taxable valuations as much as 75%.[26] Corresponding estimates in a number of other states show generally similar results.[27]

Reductions such as these in general property tax returns would necessarily require either drastic curtailment of present services, shifts in tax burden to non-exempt property by increasing tax rates or assessments, or a more fundamental shift in the revenue system away from general property taxation to some other revenue device, such, for example, as the sales tax. Whether preferential treatment of homesteads

[21a] Wyo. Laws 1937, c. 140; Ala. Laws 1936-37, (Sp. Sess.) p. 107, S. 5.

[22] *Cf.* Paige, *The Exemption of Homesteads from Taxation* (Am. Legislators' Ass'n, May 6, 1935).

[23] Knight, *The Effects of the Proposed Homestead Exemption in Alabama on Tax Revenues of Tuscaloosa County*, UNIV. OF ALA., BUREAU OF BUSINESS RESEARCH, STUDIES OF LEGISLATIVE PROBLEMS IN ALABAMA, Mim. Ser. No. 5, Pt. 2 (1934).

[24] Fla. League of Municipalities, FLA. MUNICIPAL RECORD, Oct. 1934.

[25] *Property Tax Exemptions and Rate Limitations* (Ass'n of County Comm'rs of Ga., Jan. 1935) 17.

[26] Note (Feb. 1937) 26 NAT. MUN. REV. 95.

[27] May, *Estimating the Effects of Homestead Tax Exemption* (Aug. 1937) 13 J. OF LAND AND PUB. UT. ECON. 307.

would actually operate in their favor, would ultimately depend upon the nature of replacement measures adopted. In a number of states, specific or over-all rate limitations would prevent shifting of the tax burden, where rates are already at or near the legal maximum. The use of the sales tax for purposes of relieving small home owners of real estate tax burdens has elsewhere been characterized as "taxing the poor to help the poor." The recent general resort to sales taxes would undoubtedly receive further impetus as a result of homestead exemption. In fact, a number of recent exemption bills have carried provision for general sales taxes as substitute revenue measures.

Assuming that recourse may be had to replacement tax measures more equitable than the sales tax, the usual exemption device may reduce the tax burden on the small income home owner, but does nothing for tenants with small incomes. When, as is usually the case, the definition of the homestead runs strictly in terms of owner-occupancy, the measure favors only persons able and willing to own their own homes.[28] The tenant, bearing at least that part of the real estate tax burden on non-exempt property which is shifted, is placed at a relative disadvantage. The burden shifted might be noticeably increased should local revenue losses be made up by higher rates on remaining non-exempt valuation.

While tax reductions in the aggregate, as a result of moderate homestead exemption, would present serious revenue problems for state and local governments, the benefits accorded individuals under typical measures would not be great, and could easily be offset by their contributions under replacement measures. This is particularly true of exemptions from state taxes of say, five to ten mills on a low valuation limit. Likewise, if the annual tax reductions involved should be sufficient to constitute an inducement to purchase on the part of prospective home-owners, there would be a tendency on the part of the seller to capitalize them in the purchase price.

There exists little question as to the desirability of general property tax reform, but the homestead exemption measure has no merit from the point of view of a just distribution of tax burdens. It may actually increase the inequities of the tax system and the difficulties of its administration.[29] The approach might better be in the direction of more scientific assessment and collection processes, or, if tax relief to real estate is to be accorded, it should not take place in the restricted and unscientific manner apparent in exemption devices. Rather, the change should embrace

[28] A critic of the recent Iowa law, *supra* note 21, supposedly to promote purchase and ownership of homesteads and to combat the increase in tenancy, stated: "Once it is functioning, the law will provide a mild kind of a redistribution of wealth, but apparently in the direction of taking, through the sales tax and the burden on tenants, from those that have not to give to those who are a least able to own their own homes. In short, the tenant gets no relief as he continues to pay the part of the real estate tax that is shifted to him, and in addition is burdened with a two percent tax upon his general purchases, his utility services and his amusements." Root, *Iowa's Tax Refund Law for Homesteads* (May 1937) 26 NAT. MUN. REV. 259.

[29] For example, inequities due to widely different levels of assessment among minor taxing jurisdictions. Moreover, home owners as a class are relieved from taxation regardless of ability to pay.

broader replacement or realignment of revenue sources in the tax system as a whole where possible; income and business taxes would be desirable replacement measures for real estate taxes. The rapidity of the shift would have to be geared to the condition of state tax administration and state aid system.

GRADUATED LAND TAXES

One instance of foreign measures of differential taxation designed to discourage absentee holding, break up large estates, and bring idle or under-utilized land into use is the graduated land tax as adopted in Australia. The Commonwealth Parliament had no power to pass direct land legislation or regulate tenure; hence its only means of attacking this problem was by tax measures.[30] The Commonwealth land tax is levied at graduated rates on unimproved capital value. Two schedules of rates are provided, one applying to land absentee-owned, the other to land not absentee-owned. Both schedules penalize large holdings, but the tax is always heavier on the former to penalize absentee ownership. This tax was first imposed in 1910-11, when the rate of tax was 1 and 1/30,000 penny on the first pound in excess of an unimproved value of £5000, increasing by 1/30,000 d. for every additional pound up to £75,000, where the increment of tax was 6 d. and the average rate 3½ d. The increment of tax of 6 d. operated only on the excess of £75,000. The general exemption of £5000 did not apply to absentees, the rate for whom was always 1 d. more than for residents, and the first £5000 of value for an absentee bore a flat rate of 1 d. per pound. In 1914-15 the rate of tax was amended by making the tax on 1 pound 1 1/18750 d., increasing by 1/18750 d. for each additional pound, up to £75,000. The increment on value in excess of £75,000 was at the rate of 9 d. per pound. Absentees correspondingly paid 1 d. per pound more than residents. A 20% increase which was imposed in 1918-19 was withdrawn in 1922-23 and a further reduction of 10% was granted in 1927-28. No further alteration was made in the rates until 1932-33, when a reduction of 33-⅓% was made, and in the following year the rates were further reduced to 50% of those effective in 1927-28.[31]

In addition to the Commonwealth land tax, the states in Australia likewise levy various land taxes on unimproved land values, some of which discriminate against absentee owners and some against undeveloped land, while others are graduated according to valuation without other specific discrimination.

The plan has apparently only partially achieved its purpose. Its early administration was beset with a heavy volume of litigation and evasion. The decline in large holdings immediately before and after passage of the tax plan was in part due to anticipation of severe discrimination and in part due to nominal rather than real transfers. Special concessions to holders in early months gave some incentive to sale to tenants on easy terms, subdivisional sales, or sales to the government for closer settlement. It has been contended that, even without the tax, a decline in large

[30] The desire to meet heavy demands for land and small holdings was a part of the background for this legislation.

[31] OFFICIAL YEARBOOK OF THE COMMONWEALTH OF AUSTRALIA (Comm. Bureau of Census and Statistics, 1936), No. 29, Pp. 845-846.

estates would have occurred, due to: (1) division of lands under settlements and wills; (2) government purchases of land for returned soldiers; (3) a period of good prices inducing subdivision and sale.[32]

A substantial differential enjoyed by properties of small size and value may induce large holders to sell, but may not actually operate to reduce the price to purchasing tenants or to improve their relative financial position. Much more depends upon the adoption of direct policies by the government with regard to promoting purchase and settlement. There is some question as to the desirability of penalizing size alone in a large ranching country unless it can be demonstrated that the land can be broken up for wheat and mixed farming and put to better use at an early date.

New Zealand also imposed a national graduated land tax until 1931, when it was replaced by an income tax.[33] Its repeal was due more to the effects of the depression on net farm incomes than a change in viewpoint. "The graduated land tax, continually revised to make it more penal against the large estates, may not have been as decisive an inducement to subdivision as hoped, but it did reinforce the pressure of such other tendencies as rising prices and increasing land demand."[34] Other related forces making for closer settlement were growth of population, family subdivision, and state repurchase laws.

The record of administration reveals a flood of early evasion, continued increases in rates, and great practical difficulties in valuation.[35] The severity of the higher graduations of the national tax was less significant than the liberality of exemptions extended to the small holder. Aggregate local rates (ungraduated) and urban progressive land taxes and income taxes were much heavier on both large and small holders. "The graduated land tax may, perhaps, be summed up by saying that it hindered the growth of land aggregation, contributed in an unassessable degree to the break-up of large estates, while avoiding, through its exemptions, all obstacles to the development of small farms. As a revenue device, it has had little importance."[36]

Taxation of *unimproved values* of land, as employed in Australia and New Zealand, is almost necessarily a corollary of classification on the basis of absentee or non-absentee ownership, since the intent is not to discourage the ownership or the

[32] Heaton, *The Taxation of Unimproved Value of Land in Australia* (1925) 39 Q. J. ECON. 433-434.

[33] A flat rate tax on unimproved value was retained with mortgage exemptions (graduated according to unimproved value) and a reduced minimum taxable valuation in order that it apply to a greater percentage of farmers. New legislation was also added to strengthen compulsory land purchase or lease to establish small holdings, although economic conditions were not favorable to action.

[34] Belshaw, Williams *et al*, *Agricultural Organization in New Zealand* (N. Z. Inst. of Pacific Relations. Melbourne Univ. Press, 1936) 22.

[35] Such as segregating value of certain improvements from the value of the land, and assigning socially created value as against value of improvements added by the owner.

[36] Belshaw, *op. cit. supra* note 34, at 219. In valuation, three values were assessed for each property: (1) unimproved value of land, (2) value of improvements, (3) capital value. An interesting provision of the law was that upon taxpayer's appeal from assessment and failure to reduce by the Valuer-General:

(1) If the objector refused to accept the Valuer's assessment of fair selling value, the property could be acquired at that valuation by the Crown.

(2) The owner could require the Crown to take over his land at official valuation if the Valuer refused to reduce his valuation to the level considered by the owner as fair selling value.

making of improvements as such. There is considerable doubt whether the fundamental problem attacked, large estates, aggregation, and absentee holding, is of the same character and degree in this country. Australian and New Zealand experience has shown that assessment and listing of strictly unimproved values can be done, but that it is a matter of great practical difficulty and arbitrary decision, bringing in their train a flood of appeals, litigation, and administrative tangle. It has already been pointed out in connection with homestead exemptions that in many states classification on the basis of ownership and valuation would run counter to constitutional uniformity provisions, requiring amendments for enactment. Since the issue of discrimination is more clearly apparent in the case of the graduated land tax than in homestead exemption, in all probability the former would encounter stiffer opposition, both in the constitutional fight for enactment, and in subsequent administration.

The graduated land tax would probably be suited to administration only by the states rather than by local units, not only because of the complex technical and administrative factors involved (which would in all likelihood bring administration to the states' doorsteps through the Boards of Equalization and Appeal even under local responsibility), but because the heavy dependence of local governments upon the property tax for strictly revenue purposes would inhibit their use or enforcement of a property tax for a regulatory purpose. In the graduated land tax, in the event of non-payment of the tax or failure to subdivide and sell, the property will be taken over by the governmental agency charged with enforcement of the tax. The penalty for non-payment is of course true of property taxes generally. The wide-spread break-down of the existing system of tax reversion would seem to be sufficient basis for presuming failure of enforcement by counties or other units primarily dependent for revenue on the property tax. It is not at all certain that such a measure could be enforced by the state, assuming it could be enacted.

It is doubtful that such fundamental changes in the entire system of property taxation as would be entailed would be warranted, considering what they might accomplish in promoting ownership on the part of tenants,[87] since the dislocation of revenues and the readjustments in state and local finance made necessary in order to set in motion forces of any consequence might be out of all proportion to the benefits conferred.

THE SINGLE TAX

The single tax approach to this problem, of which there are numerous modern variants, represents another version of the magnitude of change considered necessary, and indicates the degree to which basic institutional and administrative factors must be ignored and the theoretical vagaries which are involved. This analysis presumes that a tax equal to the "economic rent" of land reduces the salable value of land, offering all the opportunity of owning land and thus bringing about the diminution of tenancy. The concurrent elimination of taxes on incomes and capital saved

[87] The federal government, of course, is effectively prevented from levying a tax upon real property according to value by the constitutional provision that direct taxes be apportioned according to population.

would (according to this analysis) increase the net rate of interest on capital to those who save (unless and until increased saving again causes the rate to fall), further lessening the salable value of land by bringing about the capitalization of its reduced rent at a higher interest or discount rate. Thus, purchasing tenant farmers could pay taxes, or more than pay them, out of interest on their saving in purchase price. Elimination of taxes on commodities or consumption would assist the process of accumulation for land purchase.

This theoretical approach runs entirely counter to that embodied in special classification and exemption devices as applied to owner-operated family-size farms. In fact, it holds the relief of real estate in general, or agricultural property in particular, through increased state aid, tax limitation, classification or exemption measures, accompanied by substitution of other sources of tax revenue, to be detrimental to prospective landowners both through the increase of land values and the actual increase of their other tax burdens and the penalty on savings. This analysis presumes the tax factor to be much more significant as an influence upon land values than is likely to be the case in practice.

CAPITAL GAINS TAXES

A further tax measure advocated as a means of controlling land speculation is the imposition by the federal government of a specific tax on capital gains from the sale of land within a period of, say, three years from the time of purchase. Such a provision would be incorporated in the federal income tax law. This tax, made particularly heavy upon unearned net increment, is held to discourage absentee ownership, purchase for realization only, and keep land prices on a lower and more stable basis to assist prospective land owners. Here again, the device is a crude indirect method of control, probably cumbersome out of proportion to the benefits it might convey in mitigating the evils of farm tenure. The legal or constitutional questions involved in singling out one type of capital gain for particularly heavy taxation and the use of the income tax for an obviously regulatory purpose are not here discussed.

The cost of administration of such a tax would undoubtedly exceed any long-run revenues derived from it over both prosperous and depression periods, although social control rather than revenue is the primary consideration in its application. The most important objections lie in the difficulties of efficient and equitable administration. Information as to actual considerations paid would have to be required for all transactions as a matter of record, and allowances would have to be made for enhancement of value by the owner, including repairs, remodeling, new building, reforestation, drainage and other improvements. Special investigation would be required to prevent evasion through fictitious ownership and to avoid injury through unavoidable or forced sale. Almost insurmountable obstacles in checking, obtaining authentic records of costs of acquisition, proof of period held, identification of properties (subdivision), and appraisal would be encountered. It should be realized that capital gains may arise from: (1) shifts in the general price level of commodities; (2) changes in the value of money; (3) accretions due to time alone;

(4) changes in the relative value of property; (5) improvements. The realization of capital gains may come about through: (1) transfer of investments; (2) forced sale of property, as in the case of moving; (3) a large amount of improvement over a short period; (4) realization for its own sake, as in liquidation in order to retire; and (5) speculation to derive appreciation rather than annual yield. The realization may be ordinary income to the speculator or trader and extraordinary income to the occasional investor or purchaser. The law could probably make no real distinction between them except on the basis of holding period; hence no real distinction between voluntary and involuntary gains. Obviously, each case could not be examined as to the necessity for sale. There is no practicable method of separating gains from changes in the price level or in the monetary unit from real gains; thus fictitious gains may actually be taxed. Whether the tax would induce retention of properties in prosperous periods in order to avoid heavy taxes and cause artificial scarcity and inflationary prices will depend upon the severity of the tax and the period of holding selected. A short period of holding would permit avoidance of the tax under most circumstances.

The problem of speculation may be intimately connected with the problem of controlling fluctuations in the general price level and be associated with short-run factors or long-run increases in the general price level. Proposals of this character should be made so definite and specific that the philosophy of taxation and equitableness upon which they are based can be thoroughly examined. Furthermore, there should be an indication of the exact *nature* and causes of the speculation which it is desired to curb.

CONCLUSION

There appears to be little merit in the several tax devices examined from the standpoint of measurably aiding in a program to promote farm security. Not only is there reasonable doubt as to their effectiveness in contributing to the accomplishment of the desired ends, but there is virtual certainty that they would set in motion a train of unfavorable consequences with reference to the general property tax system as a primary source of local governmental revenue. Certainly the general property tax system is in need of reform both as to equitableness and efficiency in administration. A readjustment in many state tax systems would be desirable with a view to establishing a better balance between revenue sources and relieving real estate. These problems should be attacked as such, however. Considering the present condition of its administration, the property tax would not conceivably be improved by encumbering it further with regulatory functions and ill-advised exemptions. It would seem that the promotion of farm ownership by operators and the diminution of tenancy could be more readily assisted by a direct attack on the problem through government purchase or financing of farm homes. Such supplementary aid as might be derived from the use of specially designed tax measures would probably not be sufficient to warrant the complications in tax laws and administration which would be set in motion.

THE STATUS OF AGRICULTURAL LABOR

WILLIAM T. HAM*

It has long been customary to regard the farm laborer, not as an ordinary employee, but as a farmer's apprentice. Often he was a neighbor's son or a thrifty, hardworking immigrant from northern Europe. Farmers complained that as soon as he became really useful he left for a farm of his own. This was the only labor problem. Today, however, in some quarters, this view is held to be quite obsolete. The farm laborer is described as an economic half-caste, cut off from any chance at ownership and denied even the meagre legislative protection which is given the worker in industry. For the picture of the hired man eating at the farmer's table is substituted that of a group of ignorant Mexican field hands camped by a ditch at the roadside.

The status of the farm hand on the "agricultural ladder" is truly a matter of significance. If the laborer is a tenant in the making, his conditions of employment are of less importance than if he is destined to remain a laborer for life. It has been said that it is doubtful if, in this country, farm wages ever have been high enough to warrant any man deliberately adopting farm labor as a life occupation,—that, as a matter of fact, wages have ordinarily been only part of the remuneration, the rest consisting of training in the business of running a farm.[1] More recently, however, it has been asserted that the agricultural ladder has become difficult, if not impossible, to climb. Many tenants and small owners, debt-burdened, have become laborers. The proportion of owner-operators of farms has decreased while that of tenant operators has increased. It is suggested, moreover, that in such movement through tenancy to ownership as does occur, the rate of ascent has of late been much retarded.

The correctness of the interpretation of the census figures in terms of a permanent stratification of tenure status is open to question. However, it is clear that there has been a piling up of farm laborers at the base of the tenure structure. This is a development which has accompanied the trend toward the more intensive use of agricultural resources. In different parts of the country, from 1880 to 1930, changes

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[1] BLACK, AGRICULTURAL REFORM IN THE UNITED STATES (1929) 445-446.

in the tenure groupings have varied. The shift from grain growing to dairy farming in Minnesota and Wisconsin, and to corn-hog and beef cattle farming in Iowa, brought a decrease in the proportion of owners and an increase in that of tenants and laborers. In Kansas, the partial shift from small grain to corn and livestock brought with it a relative increase in the labor supply. In Ohio, there was relatively little change. California and New Jersey, however, as a result of the growth of truck, fruit, and poultry enterprises, exhibited a startling increase in the proportion of laborers at the expense of that of owners and tenants.[2]

In the South the tenure structure was modified in a different manner. In Alabama and North Carolina, for example, the proportion of tenants increased while that of owners and laborers decreased. The laborers evidently had become share croppers. Whether this is to be regarded as a step up the agricultural ladder in any significant sense is doubtful. To southerners, the cropper is merely a laborer who is paid through a share in the crop. However, this shift undoubtedly is the explanation of much of the growth of tenancy in the South reported in census figures. From 1930 to 1935 the number of croppers declined—a development which is likely to continue. Whether the proportion of farm laborers will increase correspondingly remains to be seen, since in the plantation areas the ultimate effects of mechanization and of measures for the control of the volume of cotton production are as yet indistinct.

In considering the status of farm labor, it may be well at the outset to point out that, although there is a current tendency to center the discussion upon the migratory seasonal laborers, there are in fact three fairly distinct classes of farm workers. The first of these consists of unpaid members of the farm family, who, on the typical American farm, still do most of the work. In 1929, out of a total of 6,288,648 farms covered by the 1930 agricultural census, 58% hired no labor. The number of unpaid family workers was given in the 1930 census as 1,659,792; in 1935 the agricultural census reported 4,273,166 such workers. In American agriculture only about one fourth of the gainfully employed are hired persons; in industry wage workers form the bulk of the working force. The economic maladjustments of the unpaid family workers, while constituting an important phase of farm welfare, are seldom alluded to in connection with the labor problem.

The second major group of farm laborers is that of the regular helpers, hired for all or for a good part of the year. According to the 15th census there were, on April 1, 1930, 2,732,972 persons whose usual occupation was working on farms for wages. In the agricultural census of 1935, of the 967,594 farms which reported hired help, 722,645 had only one employee, 137,670 had two, while only 11,410 reported 10 or more wage hands. It is clear, therefore, that the persons in this second group of farm laborers are widely dispersed. There is little reference to them in the writings on the grievances of farm labor, and it is safe to say that in most areas they do not represent a serious labor problem. They are characteristic of the regions given over

[2] Black and Allen, *The Growth of Farm Tenancy in the United States* (May 1937) 51 Q. J. ECON. 402-405.

to production of corn and livestock, wheat and the small grains, of the dairying districts and the western range.

Concerning the third group, namely, the casual and seasonal farm laborers, resident and migratory, no satisfactory census information is available. In view of the fact that in some specialized areas agriculture is largely dependent upon them, the lack of data is unfortunate. Moreover, it is the employment status of this group and, more particularly, of the estimated quarter of a million migratory workers, that most frequently gives rise to charges of exploitation of farm labor. Around the citrus workers in California and Florida, the vegetable workers in New Jersey, the Texas cotton pickers, the lettuce field hands of the Imperial and Salinas Valleys and the beet workers in Colorado and Michigan, there has grown up an extensive literature of complaint, some dating back to the first decade of this century. Estimates of the total number of the part-time seasonal laborers range from one to two million.

It is of interest to note that while, since the turn of the century, there has been an increase in the number of employees in industrial undertakings, in agriculture, despite an increase, probably of more than a third, in total farm output, the number of hired laborers in 1930 was not very different from what it was in 1900. In some states it is true that farm workers make up a significantly greater proportion of the persons gainfully employed in agriculture than was the case in earlier years. In these areas there has usually been an increase in the number of large scale farming enterprises. A census investigation listed 7,875 of these in 1929 out of a total of 6,288,648 farms in the United States. They represented about 0.1% of all farms and less than five per cent of American agriculture, being concentrated in truck, fruit and stock ranch areas.[3] It thus appears that, even if the large enterprises made up of several operating units under unified control and the plantations of the South were included in the count, large scale farms are not, in general, characteristic of American agriculture.

To say this, however, is not to belittle the importance of the seasonal farm labor problem in those areas where large scale and intensified production of special crops has become common. In 1929 there were in California 2892 large scale farms and 731 in Texas, as compared with 65 in Iowa and 21 in Minnesota. Of the large scale enterprises in truck crops California had 59.7%, in fruit 60.1%, in cotton 30%, in dairying 40.5%, and in poultry 52.9%. In this state in 1930 agricultural wage earners made up 56.4% of the total gainfully employed agricultural population 10 years of age and over, as compared with a percentage of 26 for the United States. These figures indicate a development in agricultural organization quite different from the old-fashioned family unit, which, when coupled with the growth of auxiliary canning and packing industries, with their highly seasonal demands for relatively unskilled laborers, gives rise in limited areas to a labor problem of peculiar difficulty.

One of the most striking features of farm employment is the varied character of the demand for labor. This comes not only from the varied labor requirements

[3] JENNINGS, LARGE-SCALE FARMING IN THE UNITED STATES, 1929 (1933) 7.

of different crops, but also from the variations in the requirements of the same crops in different areas. In the Corn Belt, for example, corn harvested from standing stock requires 19 man hours per acre, while further east, an acre of corn cut and harvested from shock requires 53 man hours.[4] In California there are produced on a commercial basis 213 field, fruit, and truck crops, 21 types of livestock products, 11 types of poultry products, and a score of miscellaneous commodities such as honey, queen bees, fox furs, trout, mushrooms, nursery stock, bulbs, and cut flowers. The small grains in Contra Costa County require only 25 man days of seasonal labor per 1000 acres annually, while the hops in Butte County call for 51,000 man days per 1000 acres. In such special crop areas, the basic labor problem is the need for a supply of workers during certain seasons which is greater than can be profitably employed by agriculture throughout the year. In California, for every 100 seasonal workers required in the winter period, 172 are needed during the early summer and 227 during the fall. During the month of March a minimum of 48,000 seasonal workers is required, for February, 50,000, for December, 56,000. From this one might conclude that agriculture in California offers year-round employment for 48,000 workers, employment for 11 months for 2,000 more and so on. As a matter of fact, however, even 48,000 workers cannot be given year-round employment because of the various tasks required and because of the wide separation of the areas which offer employment.[5]

The demand for farm labor has been greatly affected in some areas by the mechanization of farm operations and in the future is likely to be still further modified thereby. During the first quarter of this century it was the annual harvest migration in the wheat belt which furnished the most familiar example of migratory seasonal labor. In some years as many as 250,000 men were called for to shock and thresh the grain. With the coming of the tractor combine, however, this migration became a thing of the past. In other portions of the United States the increase of tractor, motor truck and motorized tillage equipment had similar, if not as drastic, effects. In 1920, 15.2% of the farmers of the country had tractors, in 1930, 43.8%.[6] In the South, the increase has been less rapid, but there concern is expressed as to what may happen if success is met with in the efforts to perfect a mechanical cotton picker and to extend methods of check-row planting and cross cultivation as a means of decreasing chopping by hand. In Texas, Arizona, and California, the result may be that the migratory labor, now widely used in these regions, to the practical exclusion of sharecropping, may be eliminated. In the eastern cotton area, where hand labor requirements are met by the share croppers with their large families, the effects of mechanization are likely to be still more serious. A similar displacement

[4] Moorhouse and Juve, *Labor and Material Requirements of Field Crops*, U. S. DEP'T AGRIC. BULL. 1000 (1931).

[5] Adams, R. L., *Farm Labor*, a paper presented at the annual meeting of the Western Farm Economics Ass'n, June, 1937.

[6] Cooper, *Displacement of Horses and Mules by Tractors* (June 1937) THE AGRICULTURAL SITUATION (U. S. Dep't Agric.) 22-23.

of labor may take place in the sugar beet fields, with the development of mechanical methods of thinning and harvesting.

From the census it appears that in 1930 the hired workers on American farms, outside of the South, were predominantly native born, white men. Only among Negroes was there a large proportion of female workers. Children form an appreciable part of the labor supply only in the South and in the special crop areas. In 1930, despite the limitations on immigration, a considerable number of the farm hands were foreign born. The significance of this group is greater than their numbers indicate, for it is these people, in particular, who are likely to be found in the specialized areas. In California, the gradual intensification of agriculture has involved the use, first, of Chinese, then of Japanese, then of a mixture of races—Armenians, Portuguese, Italians, German-Russians, East Indians and Negroes—and finally of Mexicans and Filipinos. Foreign-born farm hands of an older generation in New England, Michigan, and Wisconsin often dispossessed the native-born farmers and drove them to urban employments. In Colorado and Nebraska, many German-Russian sugar beet workers have become farm operators. The present-day Mexicans, Filipinos, and South Europeans, however, do not seem, as a group, to better themselves.

Owing to the scattered, seasonal and highly diversified nature of much agricultural labor and the varied wage arrangements, information on wage rates and earnings is much less satisfactory than in the case of the major groups of industrial workers. However, the available data since 1910 show that farm wage rates have maintained a fairly consistent relationship to farm income, gross and net, also to prices received by farmers for their products and to other such factors. This would seem to indicate that farm wages in general do not rest upon the irresponsible caprice of the farm operator, but, in the large, bear a definite relationship to the economic enterprise of farming. Farm wage rates fluctuate less and change more slowly than farm incomes. In 1929 farm prices and incomes were at a level which was about 150% of the prewar standard, and farm wage rates at about 170%, as compared with a level of about 230% of the prewar level for urban wage rates. The competition of industrial employments, at high wages, thus supported a level of farm wage rates which was high relative to farm prices and farm incomes. In 1932 farm prices and farm income per capita fell to nearly one-half of their prewar averages, while farm wage rates were slightly below their prewar level. In 1933, when farm incomes turned upward, farm wage rates lagged and have remained in a position of relative disadvantage, due, no doubt, in part, to the inability of farm laborers to shift, as during the post-war period, to industrial employments. Reduction in demand owing to increased mechanization is also a factor. As a result, farm wage rates at present, although at about the same level as farm prices relative to their prewar averages, are low by comparison with post-war standards of farm prices, farm incomes, and urban wage rates. The outlook for improvement depends upon such factors as normally, in the past, have reduced the hangover supplies of farm labor,

viz., enhanced industrial recovery, with growth of urban purchasing power and increased offering of urban jobs. At present, the recapture of our export trade in cotton, wheat, etc., and control of the rate of mechanization of farm operations are factors of importance.

Geographically considered, in July, 1937, average monthly farm wage rates with board varied from $16.70 in the East South Central states to $46.49 on the Pacific Coast, as compared with $23.80 and $53.10 during the period 1925-29. The ranking of the geographical divisions follows roughly the ranking in gross and net farm incomes.[7] Widely differing suggestions have been made as to the reasons for this regional variation; it must suffice to say that it appears to be due to differences in the effectiveness with which productive resources and equipment are used in relation to man power. Such factors as the presence of industrial competition for labor, the opportunity for some degree of permanence of employment, the efficiency of the laborers and their standards of living also have influence.

Any cursory examination of the farm labor problem must necessarily omit consideration of the wide variety in methods and forms of wage payment—time and piece rates, summer and winter rates, bonuses and holdbacks, payments by token and through provision of board and lodging, perquisites and allowances in kind, credit and commissary arrangements,—which so often furnish opportunity for friction in employment relations. In industry, cash wages prevail and variations are likely to apply to a considerable number of workers. In agriculture, on the other hand, perquisites make up nearly two-fifths of the wages of non-casual hired farm hands the country over and their nature may vary from farm to farm. Perquisites are ordinarily defined as emoluments given *in addition to* wages at the going rate. In agriculture, however, they are looked upon by both worker and employer as emoluments *in place of* cash wages, the two together constituting total wages. Perquisites may include a wide range of goods and services, such as board and room, housing, dairy and meat products, flour and meal, and various privileges such as that of keeping livestock, with feed or pasturage. The precise combination is determined by custom. The items board, room, and washing are of greatest importance; in 1925 they averaged $26.65 per month in value in the case of the non-casual hired farm laborer. Housing and fuel, second in importance, averaged $12.12 per month per worker of the same group. Casual laborers received less in way of perquisites than the regular workers, but even here such items amounted to nearly one-fourth of the total remuneration.[8]

The complexities above referred to make it difficult to compare the level of agricultural wages with that in industry. On the one hand, we have the judgment of such an authority as Paul H. Douglas, who in his *Real Wages in the United States* concludes that since 1890 the absolute level of farm wages has been low when

[7] Black, *Agricultural Wage Relationships* (1936) 18 REV. OF ECON. STATISTICS, No. 2.

[8] FOLSOM, *Perquisites and Wages of Hired Farm Laborers*, U. S. DEP'T AGRIC. TECH. BULL. 213 (1931) 52.

compared with the wages of the city workers and that, despite the high cost of living in the cities, hired workers found better opportunity there than in the country.[9] On the other hand, however, we have the view that if the wages of farm laborers, including perquisites, are compared with those of unskilled common laborers in industry, the former equal or exceed the average full time and actual earnings for common laborers in representative industries.[10]

The effects of the intermittent employment that is characteristic of agriculture are shown at their worst in the case of the migratory farm laborers in the special crop areas. Their number has been estimated at anywhere from 200,000 to 350,000, with as many as 150,000 in California.[11] In that state, the beaten track runs from the peas, lettuce and cantaloupes of the Imperial Valley through the San Joaquin, with its cotton, grapes, and fruits of various kinds, to the Sacramento Valley in the north, —a direct distance of over 500 miles. Many migrants go much further,—to the berry harvests of Puget Sound, the apple harvests of Hood River, Oregon, and Yakima, Washington, or those of peas or beets in Idaho, Montana, or Colorado. Cotton pickers in California may come from Arkansas; those in Oklahoma may have begun the season's work 600 miles away in south Texas. Berry pickers do not ordinarily travel so far but one established route of travel is from Louisiana to Michigan. Many workers in the citrus, fruit, berry and truck crops of Florida come from Georgia or Alabama.

The old time harvest hand was a single man. Today the migratory worker is often accompanied by his entire family, which, with the few belongings, are crowded into an old car. On the larger farms he may find good housing accommodations, with facilities for securing supplies. For the mass of the migrants, however, camping accommodations are of the most primitive and unsatisfactory sort and are a constant menace to the health of the community. Lacking a fixed residence, the migrants find relief difficult to get, owing to the settlement laws. Harsh measures are frequently employed by authorities to prevent their entry or to hasten their departure.

The children of the migrants give rise to a perplexing problem. Under conditions of normal and permanent residence in a community or on a farm, such farm work as children are ordinarily required to do cannot be regarded as harmful. In the South child labor is but one expression of widespread rural poverty. In the special crop areas, however, the problem is of a peculiar character, due to the constant movement of the migrant families and the lack of alternative activities for the young. The earnings of children form an important contribution to the family income, hence the difficulty of keeping them out of the fields. But even if this were

[9] DOUGLAS, REAL WAGES IN THE UNITED STATES (1930) 189-90.

[10] Folsom, *op. cit. supra* note 8, 55. Recent data as to total annual earnings relate to seasonal workers, chiefly relief clients. See Webb, *The Migratory Casual Worker*, W. P. A. RESEARCH MONOGRAPH VII, (1937) 67-70. Landis and Brooks, *Farm Labor in the Yakima Valley*, WASH. AGRIC. EXP. STAT. BULL. 343 (1936) 54, report a median annual income of heads of transient families of $297 and of heads of resident families of $198.

[11] Taylor, *Migratory Farm Labor in the United States* (March 1937) 44 MONTHLY LABOR REV. 546.

possible, in most states there are no educational facilities. School regulations, in the case of migrants, are not enforced. The children are not welcome in the schools of a community. Educationally retarded, undernourished and often diseased, deficient in moral training, unused to school procedure, they are usually a disrupting element. In California much effort has been devoted to this problem and special facilities for the migratory children have been provided. Even here, however, in the districts where attendance laws have been fairly well enforced, the ill effects of the constant shifting from school to school remain.

As regards employment relations, in the major corn, wheat, livestock, and general farming areas, where the hired man deals directly with the farmer and often works beside him, there is little occasion for complaint as to management and supervision. At harvest time, it is true, where the machine has not displaced the itinerant laborer, there still appears some of that suspicion and hostility between farmer and men which in the past was so fertile a field for the I. W. W. propaganda. Also, in the dairying regions, among milkers and truckmen, there have been difficulties. But it is in the special crop areas, again, in connection with seasonal, migratory labor, that the nearest approach in agriculture to the management problems which obtrude themselves in packing house and cannery is found. The complaints are varied. They relate to the haphazard methods of recruiting labor, to reliance upon the "labor contractor," not only for a supply of workers but for field supervision and payment of wages, to manipulation of piece rates and the use of speed-up devices, fake "bonuses," and "hold-backs." The reluctance of growers to deal with a union in determining wage rates, or even to discuss the matter with employees, is also a common grievance.

As a response to unsatisfactory conditions of employment, agricultural laborers in this country and abroad have attempted to secure for themselves the benefits of collective bargaining. Aside from the ill-fated efforts of the six Dorchester laborers in 1834, probably the first significant venture of this kind was the union established by the Englishman, Joseph Arch, in 1872, the forerunner of the National Union of Agricultural Workers. In pre-Nazi Germany there was an interesting development of agricultural trade unionism dating from 1908. The International Landworkers Federation, at its 7th Congress in 1935, comprised agricultural workers' unions of 20,000 members or more in six countries, as well as smaller bodies in five others.

Everywhere it has been the experience that agricultural unions are difficult to organize due to the fact that workers are ordinarily not concentrated, like industrial workers, under one roof but are widely scattered. Moreover, the regular farm hand, like the farmer, is usually a conservative person, while the seasonal workers, often of alien origin, are unstable and likely to be impatient with the slow procedures of organization and bargaining. A union, once organized, is not easy to maintain. The dispersion of the workers calls for numerous small locals, for a number of officials and an outlay of time and money that are disproportionately large by comparison with unions of industrial workers. Frequent meetings are not easy to

arrange and propaganda is costly. Moreover, union dues represent a relatively larger drain upon the cash resources of the agricultural than of the urban worker.

In the United States, the difficulties are greater than in such comparatively compact and racially homogeneous countries as England and Germany. And yet, during the past 30 years, there has been a succession of efforts at organization, especially among seasonal workers. The first attempt was that of the I. W. W., in 1909. After the War, the venture was continued by the Communists and various brands of "left wingers." From time to time the A. F. of L. and some of its affiliated state federations made tentative forays into this field. In 1933, there was an outbreak of agricultural strikes in the special crop areas and efforts to form unions were redoubled. In 1936 there were affiliated with the A. F. of L. some 62 agricultural and cannery workers' locals with 7600 per capita tax paying members; however, a request for an international union charter was denied. Apparently the A. F. of L. authorities were not convinced that the proposed international union would be capable either of financial independence or of competent leadership from within its own ranks.[12] Partly as a result of this rebuff, the delegates of agricultural unions, meeting in Denver in July 1937, with those of the unions of packing house and cannery workers, 99 in all, from 22 states, agreed to unite under the auspices of the Committee for Industrial Organization as the United Cannery, Agricultural, Packing and Allied Workers of America. The policies of this organization have yet to be developed.

During recent years there has been a sharp increase in the number of labor controversies in the agricultural field, particularly in the specialized crop areas. In 1927 there were two strikes, involving 322 agricultural workers, in 1928, four, involving 410 workers. In 1933, however, the number rose to 47, with 58,701 workers concerned. During the period 1934-36, there were, on the average, 29 agricultural strikes reported annually, in which an average of 25,000 workers participated. Of the total of 157 strikes reported during the period 1927-1936, 114 occurred among fruit, vegetable and truck crop workers and ten among workers in the cotton fields. Seven of these involved five thousand or more workers. Of the total, 101 took place on the Pacific Coast and, of these, 81 in California. Many of these strikes have been characterized by extreme bitterness on both sides; they offer eloquent testimony to the reality of the agricultural labor problem in the special crop areas.

LEGAL DISABILITIES OF FARM LABOR

The tendency of legislatures, both national and state, to deny farm laborers legislative protection is due, first, to a belief that the actuarial and administrative difficulties would give rise to administrative costs so high as to be prohibitive; second, to a fear that the small farmer would be placed at a disadvantage; third, to a tradition that the farm hand does not require protection; fourth, to a fear that inclusion of farm laborers would mean defeat of any labor legislation proposed; and finally to

[12] AM. FED. OF LABOR, PROCEEDINGS 56TH ANNUAL CONVENTION, 587.

lack of well organized labor support. This tendency is not peculiar to the United States. Only in England has the farm hand attained a degree of legislative protection at all comparable with that of the industrial worker.[13]

As regards federal legislation, farm labor was not subject to the codes set up under the National Industrial Recovery Act of 1933 and was expressly affected by the Agricultural Adjustment Act only under the provisions of the Jones-Costigan Sugar Amendment of 1934.[14] Neither the Social Security Act nor the National Labor Relations Act have to do with farm labor.

In connection with such exclusion from the scope of federal legislation, the development of mechanized methods of sorting, packing and processing farm products, and the growth of cooperative associations of producers to carry on such operations, create the perplexing problem of drawing a line between agricultural and non-agricultural labor. In 1934 a definition drafted by Dr. Leo Wolman, Chairman of the Labor Advisory Board of the National Recovery Administration, was given official character.[15] It read as follows:

"Agricultural workers are all those employed by farmers on the farm when they are engaged in growing and preparing for sale the products of the soil and/or livestock; also all labor used in growing and preparing perishable agricultural commodities for market in original, perishable, fresh form. When workers are employed in processing farm products or preparing them for market, beyond the stage customarily performed within the area of production, such workers are not to be deemed agricultural workers."

Subsequently, there were differences of opinion as to what constituted the "area of production" in agriculture,—whether, for instance, the washing, sorting, and packing of fruit, when done, not on the farm premises, but in a warehouse, were to be classified as agricultural or industrial labor. Under the Social Security Act, according to the regulations of the Bureau of Internal Revenue, the term "agricultural labor" is limited to services performed by employees of the owner or tenant on the particular farm on which crops in their raw or natural state were produced and harvested. Where such services are performed by employees of an association of producers, even though the crops were produced by the members of the association, the labor is not excepted from the taxing provisions of the act.[16] In protest against such strict construction of the law, agricultural producers desired to have written into the proposed Fair Labor Standards Act of 1937 a more inclusive definition of agricultural labor.[17]

Under the labor laws of the several states farm labor is quite generally excepted. The detailed provisions, and the regulations for their administration, offer an intim-

[13] HOWARD, LABOUR IN AGRICULTURE (1935) 71, 79.

[14] Ham, *Sugar Beet Field Labor under the A.A.A.* (May 1937) 19 J. OF FARM ECON., 643-647.

[15] N.R.A., Release No. 2781, Jan. 17, 1934.

[16] U. S. Treasury, Bureau of Internal Revenue, Regulations 90 (1936), 7-8, 41; 60 MARKET GROWERS J. (No. 10) 268.

[17] Joint Hearings before the Senate Committee on Education and Labor and the House Committee on Labor, on S. 2475 and H.R. 7200, 75th Cong., 1st Sess. (1937) Pt. 3, 1002, 1084, 1119, 1164.

idating array which has not yet been authoritatively compiled. As regards unemployment insurance, up to April, 1937 all of the state laws approved by the Social Security Board excluded agricultural labor from compulsory coverage. Twenty-eight states, however, permitted farm employers to elect to come under the act. In nearly all the states old age assistance and aid to dependent children are applicable to agricultural laborers on the basis of certain state requirements. Laws regulating the hours of work of women and their wages do not apply to agriculture, although in six states commissions appear to have some power to set standards, and the Wisconsin wage law applies generally. The workmen's compensation laws of 17 states exclude agricultural workers, but in some of the remaining 29 states with such laws workers engaged in certain extrahazardous farm tasks are required to be insured. In three states compensation insurance for agricultural workers is elective, while in most of the others farmers may voluntarily take out such insurance.[18] Laws specifying that wages shall be paid at stated intervals apply to agricultural workers in California and Massachusetts; in nine others the Labor Department is authorized to take wage claim assignments and sue for their collection on behalf of workers. In a few states, there are lien holders laws which apply to specified classes. Fifteen states exempt agriculture from minimum age provisions relating to employment of minors, while the remainder do not permit the employment of children in agricultural pursuits during school hours.

In this connection it may be noted that the 56th Convention of the American Federation of Labor in 1936 unanimously adopted a resolution urging the removal of all exemptions relating to agricultural workers and their families from existing federal and state legislation and instructing its national legislative committee "to secure equality of rights for agricultural workers with industrial workers in all pending social and labor legislation which it initiates and supports."[19]

MEANS OF IMPROVEMENT

The foregoing sketch of the economic position of the farm laborer and of his status under existing legislation indicates that certain aspects of his situation deserve more attention than has been given them. Particularly where migratory laborers are required in large numbers the problem is one of some magnitude. As Professor Adams of California has pointed out, agricultural enterprise cannot proceed indefinitely on the assumption that the army of seasonal workers needed at peak times must and will be available without further concern on the part of the growers. If other industries cannot give employment during off-farm season, it is doubtful whether the state should be called upon to subsidize agriculture by providing a livelihood for the unemployed. The alternative would appear to be a reorganization of agriculture with a view to the introduction of crop sequences which will reduce

[18] Folsom, *Workmen's Compensation Acts and Agricultural Laborers* (April 1937) THE AGRICULTURAL SITUATION (U. S. DEP'T AGRIC.) 9.

[19] AM. FED. OF LABOR, PROCEEDINGS 56TH ANNUAL CONVENTION, 287, 640.

seasonal labor needs. Indeed nature, through a process of soil depletion, may force this change.[20]

Aside from this geographically limited problem, it is evident that whatever increases the income of the farmer will increase that of his employees. Despite the skepticism which now, in some quarters, attaches to the theory that gains of employers inevitably filter through, at least in part, to their employees, it seems clear that farm income and wage rates are closely linked. A more effective organization of agricultural enterprise, both in its individual and collective aspects, is, therefore, a necessity if the lot of the farm laborer is to be improved. In this connection thought must be given to the extension of the demand for labor through a twelve-month period, to better methods of labor distribution and to more efficient labor management. The result will be to increase employment, reduce turnover and make the laborer a more highly valued and therefore better paid man.

In the field of federal legislation, more attention needs to be devoted to the extension to farm laborers, and to their employers, of the benefits of such plans for general social improvement as those at present under the jurisdiction of the Social Security Board. The difficulties in the way of inducing the states to apply unemployment insurance to agricultural laborers are obvious, but there would seem to be no serious administrative obstacle to the inclusion of large scale farms. Workmen's compensation laws should, as far as practicable, include agricultural employments, to which end the federal authorities should cooperate in securing greater uniformity and more satisfactory standards. If health insurance seems at present impracticable, there should be further effort to improve public health work in rural areas, provide collectively for medical aid and services, and promote rural child welfare and maternal health. Special attention should be given to the needs of children of migratory farm workers. Although plans for subsistence homesteads are at present under a cloud, there still are possibilities worth investigation of returning to the land agricultural laborers of rural background and experience, especially migratory workers who have been displaced from their farms by drought or depression. In view of the interstate character of much migratory farm labor, many persons in the states affected feel that the setting up of camps, similar to those established by the Resettlement Administration in California, should be promoted by the federal government. One of the most useful things that could be done would be the improvement of the system of federal and state employment exchanges and the development of a well-trained personnel.

At present the only group of laborers in whose behalf the Secretary of Agriculture is authorized, under the farm program, to take limited action is that of the laborers in the sugar beet and cane fields. If practicable, it would be desirable that certain minimum labor standards should be embodied in marketing agreement and agricultural adjustment and conservation programs, as a condition of payment of benefits by the government. Since such programs are voluntary, there is, of course, the

[20] Adams, *op. cit. supra* note 5, 11, 12.

danger that inclusion of labor provisions would reduce participation and complicate or impede operation. The possibilities in this field deserve to be carefully considered, for by this means, if practicable, some of the more serious evils, in packing and processing plants and in the open fields, such as child labor, lack of sanitation, and excessive hours, might be dealt with.

Upon the states, however, rests the primary responsibility for improving the status of agricultural laborers since, by judicial decision, the regulation and control of agricultural production, "a purely local activity," are, like the regulation of wages and hours of labor in a local business, beyond the powers delegated to the federal government.[21] The brief survey of state labor legislation indicated the need for greater inclusiveness and higher standards as regards provision for old age, unemployment insurance, workmen's compensation, regulation of child labor, health maintenance and the like. How this can be brought about,—whether by federal assistance, pressure of organized labor or the processes of education and agitation,—remains to be determined. In all the agricultural states the employment service should be expanded and improved, and more effective methods of cooperation with the federal service devised. In those areas where the migratory seasonal laborers are a necessity there is an especial responsibility to see to it that the workers have decent camping facilities, public or private, and that proper standards of sanitation are maintained. To the social importance of more adequate provision of educational opportunities for the children of migratory workers reference has already been made. The rapid increase in recent years of labor organization and agricultural strikes suggests the urgent necessity of working out methods of wage determination by joint conference of employers and employed and of providing facilities, possibly under the auspices of the state departments of labor, for mediation and conciliation in farm labor disputes. In certain counties of California an auspicious beginning in this direction has been made and there has been considerable discussion of the possibility of a state board of conciliation for agriculture. When strikes of agricultural workers do occur, it is essential, as was noted by the President's Committee on Farm Tenancy, that the civil liberties of the workers, and the right of peaceful assembly and of organization, be preserved.[22]

The possibilities of improvement of the status of farm labor through independent action on the part of organized producers and laborers remain to be explored. As yet little has been done in this field. In some areas there is gratifying evidence that associations of producers are beginning to concern themselves with other aspects of the labor problem than that of providing an adequate supply of cheap labor. It is important that such associations should assume more responsibility for the social effects of the methods of labor utilization and management in vogue; otherwise, they can hardly escape intervention from agencies outside the industry, or the growth of militant, if sporadic, organizations of labor within it. Just what can be

[21] U. S. v. Butler, 297 U. S. 1 (1936).

[22] FARM TENANCY, REPORT OF THE PRESIDENT'S COMMITTEE (1937) 19.

accomplished by associations of laborers in the agricultural field, organized on a national basis, remains to be seen. In most countries experience indicates that either the organized labor movement in industry must be willing, as in pre-Nazi Germany, to support generously, and for a protracted period, the effort to organize farm laborers, or else the agricultural workers must have the aid of some such governmental bodies as the conciliation authorities in Germany or the agricultural wages board in England. In this connection the recent entry of the Committee for Industrial Organization into the farm labor field is of interest. Supported in some such way, unions of farm laborers may prove to be an aid in improving and stabilizing employment relations, especially on the big farms in the special crop areas. Any considerable and general increase in income, however, will depend upon a better and more productive organization of agriculture.

Indispensable to any improvement of the laborers' status is the necessity, alluded to by the President's Committee on Farm Tenancy, of more social and economic data on the farm worker's present position.[23] In most farm studies, labor is regarded simply as an expense item. Wage data are so generalized as to be of little value for specific purposes; satisfactory income data are almost non-existent. Information on the demand for labor and the supply of it in particular areas is lacking. There is no adequate knowledge of housing and camp facilities. And yet without such information the formulation of even the simplest measures for stabilization of the labor supply, regulation of the movement of labor to crop areas, avoidance of excessive spreading of employment with resulting low earnings, and scientific administration of relief and rehabilitation of the marginal labor groups is well-nigh impossible. In this field, there is need for the active cooperation of federal and state agencies in labor and agriculture, proceeding in the spirit expressed by a special committee of the agricultural colleges: "The solution of the problems of agriculture does not lie in the direction of putting on the land those workers who will take the wage which a low yield affords, but rather in raising the yield to the level which high wage men demand."

[23] *Id.* at 15.

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FARM TENANCY

DUKE UNIVERSITY
SCHOOL OF LAW

FACULTY, 1939

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